

INITIAL STATEMENT OF REASONS

FOR AMENDMENT OF REGULATIONS GOVERNING
RULES OF PRACTICE AND PROCEDURE,
DATA COLLECTION, AND DISCLOSURE OF COMISSION RECORDS

California Energy Commission
Docket No. 05-DATA-01

March 2, 2007

INITIAL STATEMENT OF REASONS

I. INTRODUCTION

The California Energy Commission (Commission) was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Pub. Resources Code, section 25500 et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. As the agency responsible for establishing the state's energy policy, the Commission collects, stores, analyzes, and disseminates a broad range of energy information.

Energy markets have changed dramatically during the past decade. Both the market structure and number and types of market participants are different than they were ten years ago. Although electricity market restructuring was intended to reduce prices and increase consumer choice, its most well-known consequence was the energy crisis of 2000 – 2001. Partially in response to that crisis, as well as in response to changes in other energy markets, the state enacted SB 1389 (Stats. 2002, ch. 568.) The purpose of the bill, discussed in more detail below, was to ensure that the Commission conducted thorough assessments of energy markets to inform the Legislature and the public about any emerging problems or issues. In order to conduct those assessments, the Legislature provided the Commission with broad regulatory authority to collect information from market participants. Subsequent to the enactment of SB 1389, the Legislature approved several additional statutory changes that direct the Commission to conduct analyses of specific issues. Included in this category are AB 1723 (Stats. 2005, ch. 703), addressing load migration, SB 1037 (Stats. 2005, ch. 366), addressing gas energy efficiency and energy efficiency programs of municipal utilities, AB 380 (Stats. 2005, ch. 367), concerning resource adequacy efforts of municipal utilities, SB 1565 (Stats. 2004, ch. 692), directing the Commission to adopt a strategic plan for the state's electric transmission grid, and SB 1059 (Stats. 2006, ch. 638) which allows the Commission to designate a transmission corridor zone, either on its own motion or by application of a person who plans to build a high-voltage electric transmission line within the state.

SB 1389 and the subsequent statutory enactments impose a series of requirements on the Commission and on participants in the California electricity market. SB 1389 replaced all of the statutes applicable to the Commission's data collection and analysis responsibilities (found in Chapter 3 of Division 15 of the Public Resources Code) with new statutory sections. Pursuant to this new legislation, the Commission is directed to conduct assessments and forecasts "of all aspects of energy industry supply, production, transportation, delivery, and distribution, demand and process." (Pub. Resources Code, section 25301.) To complete the assessments, the Commission is given the authority to require submission of forecasts and assessments from market participants. (*Ibid.*) The Commission is directed to prepare an Integrated Energy Policy Report every two years that contains "an overview of major energy trends and issues facing the state, including, but not limited to, supply, demand, pricing, reliability, efficiency, and impacts on public health and safety, the economy, resources, and the environment. (Pub. Resources Code, section 25302(a).)

Public Resources Code, section 25320 offers specific direction about how the Commission’s data collection responsibilities shall be implemented. Subdivision (a) of that Section directs the Commission to “manage a data collection system for obtaining information necessary to develop the policy reports and analyses” required by SB 1389. Subdivisions (b) – (e) provide both general guidance and requirements specific to different energy topics. The data collection system shall “enumerate specific requirements for each category of market participants, including, but not limited to, private market participants, energy service providers, energy service companies, natural gas marketers, electricity and natural gas utility companies, independent generators, electric transmission entities, natural gas producers, natural gas pipeline operators, importers and exporters of electricity and natural gas, and specialized electric or natural gas system operators.” (Pub. Resources Code, section 25320(c).)

The Commission’s existing data collection regulations, which were adopted to implement legislation that has now been repealed, are primarily directed at regulated utilities, and fail to fully address the role of new market participants, such as community choice aggregators and the California Independent System Operator. They also do not address the changes in market structure that have occurred during the past decade. Thus, the primary focus of this rulemaking proceeding is to ensure that the Commission can collect the data it needs from the appropriate market participants in order to conduct the mandated assessments in a manner that is consistent with statutory guidance governing the Commission’s data collection and assessment responsibilities. As a result, the definitions of some of the entities subject to reporting requirements in our regulations are changed, as are reporting requirements themselves. The Commission has put a great deal of effort into ensuring that the data submission requirements are both sufficient for us to perform the analyses required by statute and focused on identifying informational needs based on market function.

In addition, the Commission is proposing to consider changes to the regulations applicable to complaint and investigation proceedings and to provisions governing Commission records. These latter changes are minor in nature, and are designed to incorporate requirements imposed by the Administrative Procedure Act, modify the timelines in the Commission’s complaint and investigation process, clarify the process the Commission will follow in conducting a complaint or investigatory proceeding, and eliminate ambiguities in the Commission’s confidentiality regulations that became apparent last year during a Commission proceeding on potential release of energy planning data. The following section of this ISOR provides a discussion of the specific purposes of each proposed amendment to the existing regulations.

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II. ISOR ORGANIZATION

Government Code section 11346.2 identifies the information that must be included in this Initial Statement of Reasons. This information can be found in this ISOR as follows:

A. Statement of Specific Purpose of Each Amendment

See Section III.

B. Documents and Studies Relied Upon

The proposed amendments included in this rulemaking are the result of extensive collaboration with a broad range of energy market participants. Commission staff prepared a series of draft proposals, and sought stakeholder input, both in writing, and at four public workshops, before publishing the Notice of Proposed Action. In addition, staff researched the data submission requirements of Federal energy agencies to ensure that the proposed amendments would not be duplicative of those requirements. The Commission relied on these documents in developing this proposal. They are listed below, along with website addresses for access to those documents which have been posted to the Internet:

The following draft proposals:

Staff-proposed Changes to the California Energy Commission's Regulations on Data Collection and Related Matters, April, 2006;
<http://www.energy.ca.gov/2006publications/CEC-700-2006-004/CEC-700-2006-004.PDF>

Revised Staff-Proposed Changes to the California Energy Commission's Regulations on Data Collection and Related Matters, June, 2006;
<http://www.energy.ca.gov/2006publications/CEC-700-2006-004/CEC-700-2006-004-REV1.PDF>

Integrated Energy Policy Report Committee Draft Changes to the California Energy Commission's Regulations on Data Collection and Related Matters, August, 2006; <http://www.energy.ca.gov/2006publications/CEC-700-2006-004/CEC-700-2006-004-CTD.PDF>

The following transcripts from Commission workshops:

Transcript from Energy Commission workshop: May 2, 2006;
http://www.energy.ca.gov/data_collection/documents/2006-05-02_workshop/2006-05-02_TRANSCRIPT.PDF

Transcript from Energy Commission workshop: May 25, 2006;
http://www.energy.ca.gov/data_collection/documents/2005-05-25_workshop/2006-05-25_TRANSCRIPT.PDF

Transcript from Energy Commission workshop: July 10, 2006;
http://www.energy.ca.gov/data_collection/documents/2005-07-10_workshop/2006-07-10_TRANSCRIPT.PDF

*Transcript from Commission workshops: August 28, 2006;
http://www.energy.ca.gov/data_collection/documents/2006-08-28_workshop/TRANSCRIPT.PDF*

The following written public comments, filed at various times during the spring and summer of 2006:

Comments of Southern California Edison Company, April 27, 2006.

Comments of the Alliance for Retail Energy Markets, April 28, 2006.

Comments of Redding Power, May 2, 2006.

Comments of Calpine, May 18, 2006.

Comments of the Alliance for Retail Energy Markets, May 22, 2006.

Comments of the California Municipal Utilities Association, May 22, 2006.

Comments of the City of Rancho Cucamonga, May 22, 2006.

Comments of Constellation, May 22, 2006.

Comments of the Independent Energy Producers Association, May 22, 2006.

Comments of the Natural Resource Defense Council, May 23, 2006.

Comments of the Northern California Power Agency, May 22, 2006.

Comments of Pacific Gas and Electric Company, May 22, 2006.

Comments of Redding Electric Utility, May 22, 2006.

Comments of San Diego Gas and Electric Company, May 22, 2006.

Comments of Southern California Edison Company, May 22, 2006.

Comments of Cogeneration Association of California and the Energy Producers and Users Coalition, May 22, 2006.

Comments of the California Municipal Utilities Association, dated July 6, 2006.

Comments of the Northern California Power Agency, dated July 6, 2006.

Comments of Southern California Edison Company, July 6, 2006.

The following public documents:

EIA summary of energy data survey forms, and individual forms;
(www.eia.doe.gov/oss/forms.html)

FERC summary of energy data survey forms and individual forms;
(www.ferc.gov/docs-filing/eforms.asp)

Interim Opinion Implementing Senate Bill No. 1488, Relating to Confidentiality of Electric Procurement Data Submitted to the Commission, California Public Utilities Commission (2006);
http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/57772.htm

Glossary of Terms Used in Reliability Standards, North American Reliability Council (2005); http://www.nwpp.org/pdf/Glossary_Clean_11-3-04.pdf

Documents incorporated by reference and websites where they can be found:

North American Industry Classification System, Executive Office of the President, Office on Management and Budget (2002); <http://www.census.gov/epcd/naics02/>,
as revised for 2007 pursuant to 71 Fed. Reg. 28532 (March 16, 2006),
<http://www.census.gov/epcd/naics07/index.html>.

Water Facts; Numbering Water Wells in California, California Department of Water Resources (2000);
http://watersupplyconditions.water.ca.gov/pdf/water_facts_7.pdf

WECC Control Area Certification Procedure, Western Electricity Coordinating Council (2003);
ftp://ftp.nerc.com/pub/sys/all_updl/compliance/WECC_Control_Area_Certification_Procedure.pdf

All documents are available to the public through the Commission's docket office.

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C. Description of Reasonable Alternatives, Including Alternatives that Would Lessen Adverse Impacts on Small Businesses and Facts Relied Upon in Making This Determination.

The Commission's purpose in considering this proposal is to clarify and update its regulations governing the conduct of its proceedings, disclosure of public records, and data collection activities. With respect to the amendments governing the conduct of

Commission proceedings, and disclosure of public records, there are no alternatives that would accomplish the stated objectives and would lessen adverse impacts on small businesses as the proposal does not create any adverse impacts on small businesses. That portion of the rulemaking consists solely of organizational and grammatical changes or changes that do not affect the rights or responsibilities of any business. The basis of this conclusion is discussed below in Section III.

In developing the data collection portion of the proposal, the Commission considered a range of informational requirements; in fact, the proposal that is the subject of this Initial Statement of Reasons is considerably narrower in scope than the proposal that was discussed at first workshop in May. This reduction in scope resulted from the discussions at the workshops, at which market participants provided information to the Commission about ease or difficulty associated with providing different types of data and the amount of time required for compliance with various data submission requirements. The specific options considered for each regulation that is proposed to be amended are discussed below in Section III.

The Commission relied on the definition of small business provided in Government Code section 11342.610 in assessing whether any of the options that were rejected would lessen any adverse impact on small business. The procedural changes that are proposed for Chapter 2 and Chapter 7 of the Commission's regulations constitute minor procedural changes, in many instances clarifying applicable standards and processes. For any person, business, or governmental entity involved in these proceedings, there should be no meaningful difference in the way in which those proceedings are conducted.

The entities affected by the amendments to the Commission's data collection regulations include owners of power plants, load-serving entities, utility distribution companies (UDCs), transmission system owners, control area operators, gas utilities, gas retailers, gas processors, and interstate pipeline companies. The latter four are excluded from the definition of small business provided in subdivisions (b)(3), (b)(8), and (b)(9) of Section 11342.610 of the Government Code, and many power plant owners, load serving entities, utility distribution companies, transmission system owners, and control area operators are also excluded. The Commission finds that UDCs are either publicly owned and hence not small businesses pursuant to subdivision (a)(1) of Government Code, section 11342.610, or that they transmit power in excess of the 4,500 MWh threshold identified in subdivision (b)(8) of that section, excluding them from the small business definition. Similarly, all control area operators and electric transmission system owners fall into one of those two categories, which excludes them from the definition of small business. Thus, the only entities that may meet the definition of small business are owners of power plant facilities that generate less than 4,500 MWh per year, and private load-serving entities that provide less than 4,500 MWh per year to their customers.¹ The Commission

¹ A plant with a generation capacity of 1 MW (the minimum size that is subject to reporting requirements in this regulation) would need to operate no more than approximately 50% of the 8760 hours in a year in order to qualify as a small business. This is a very low capacity factor, and the Commission does not believe that any of the plants subject to these regulations generate as little as 4,500 MWh per year. Similarly, even small load-serving entities transmit a great deal more power than 4,500 MWh per year. For example,

has preliminarily determined that no power plant owners and only two LSEs that are subject to the data collection requirements meet these requirements and should be identified as a small business. Moreover, the Commission has also concluded that these two LSEs will not be adversely affected by the proposed amendments. In many instances, the reporting requirements have been reduced. Where more information is requested, the Commission has sought input from the affected parties on how to minimize or eliminate any impact associated with the filing requirement, and incorporated the suggestions received into the regulations. An exemption for many of the reporting requirements is available for smaller LSEs pursuant to language proposed in Section 1350. Only changes to two regulations -- Section 1306 and 1346 -- may affect the two small LSEs, and the dollar amounts associated with compliance with those changes are extremely small. To the extent that a small business is affected by a particular modification of the regulations, the specific reasons why it would not be adversely affected, and the facts supporting that conclusion, are identified in Section III below.

D. Evidence Supporting Initial Determination Regarding Significant Adverse Economic Impact on Business.

The Commission has initially determined that the proposed amendments will not create any significant adverse impact on business. As noted above, the amendments governing the conduct of Commission proceedings, and disclosure of public records do not create any adverse impacts on business as they consist solely of organizational and grammatical changes or changes that do not affect the rights or responsibilities of any business.

With respect to amendments to the Commission's data collection regulations, the Commission has also made an initial determination that the proposal will not create any significant adverse impact on businesses. There are numerous changes proposed in the rulemaking package, and while some reporting requirements will be increased if the amendments are adopted, others are significantly reduced. Total statewide costs for compliance with all of the proposed changes over the ten-year lifetime of the regulations is estimated to be \$1,548,127, whereas lifetime savings associated with reduced reporting requirements over the same time period is estimated to be \$2,888,708. Many of the companies that will see increased reporting costs are also the companies that will see savings from reductions in reporting costs. In each instance in which a reporting requirement is increased, the Commission has preliminarily concluded that the increase will not create a significant adverse economic impact on business due to the relatively small size of the increase. The specific analysis of the economic impact of each change in reporting requirements is discussed in Section III below.²

Redding Electric Utility -- with a peak demand in 2005 of 245 MW -- sold 769,300 MWh. (Redding Electric Utility is a publicly-owned utility and not a small business, but the figures are illustrative of how low sales must be for an LSE to meet the definition of a small business.) The Commission estimates that only two LSEs that are subject to this regulation may meet that definition.

² The Commission prepared an Economic Impact Statement and Fiscal Impact Statement (Form 399) in conjunction with this rulemaking. The costs to businesses are identified and documented in the Economic Impact Statement and its attachments, and the costs to those municipal utilities and irrigation districts that are affected by this rulemaking are identified in the Fiscal Impact Statement portion of the Form 399, and its attachments.

E. Effort to Avoid Duplication.

There are no federal regulations addressing rules of practice and procedure, or disclosure of agency records that are applicable to state agency. In some instances, there are federal requirements for filing energy data with either the Federal Energy Regulatory Commission or the Energy Information Agency. In many instances, however, the data that is required by the Federal Government applies to different size companies or facilities, or is provided for a different period of time. In fact, the Commission conducted a rulemaking in 2001 whose purpose was to identify and eliminate any duplicative reporting requirements. To the extent that the data required is the same or similar to that required under these regulations, the Commission's regulations allow a filer subject to multiple reporting requirements to file a request with the Commission's Executive Director to allow use of the alternative filing in place of that required by these regulations. The Commission is required to grant the request if the requestor includes certain basic information about the filing and explains how the data filed elsewhere meets the Commission's data collection requirements. (*See* Sections 1303(i), 1342(g).) These provisions should minimize or eliminate any duplicative filing requirements.

III. DISCUSSION OF EACH PROPOSED AMENDMENT

Title 20, Division 2

Chapter 2 Rules of Practice and Procedure

Article 2. All Commission Proceedings

[no changes to regulatory provisions]

Purpose and Necessity

The Commission proposes to correct a long-standing mistake in the regulations. When first adopting regulations implementing rules of practice and procedure, the Commission proposed that Chapter 2 contain an Article 2, entitled "All Commission Proceedings", including §§ 1200 – 1219. Unfortunately, in the initial rulemaking, although the sections of Article 2 were adopted, the Article 2 title itself was inadvertently omitted; as a result, Chapter 2 now contains Article 1 (including the sections intended to be identified as part of Article 2), Article 3, and Article 4. The Commission now proposes to add the Article 2 title, consisting of "Article 2: All Commission Proceedings" immediately preceding § 1200. This Article will contain §§ 1200 – 1219.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that would provide the organizational clarity sought by the Commission. There are no reasonable alternatives that would lessen any adverse impacts on small business because there are no adverse impacts on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Adding a previously omitted title of an Article of the Commission's regulations will not have any adverse economic impact on business because the change is organizational, and does not change the rights of or requirements applicable to any business.

Title 20, Division 2

Chapter 2. Rules of Practice and Procedure

Article 4. Complaints and Investigations

§ 1230. Scope

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Specifically, the reference to section 25451 and 25452 of the Public Resources Code is deleted because those statutes have been repealed. Public Resources Code, section 25321 is proposed to be added as a reference because that section establishes the Commission's authority to impose fines for failure to comply with the Commission's data collection requirements. Because those fines would be imposed as a result of a complaint or investigation proceeding, addition of the provision is necessary to make these references complete. In addition, because a complaint or investigation involving a license granted by the Commission is governed by Section 1237 (adopted in 2003), the Commission proposes to delete from the Authority and Reference notations those statutes governing the siting process. Specifically, Public Resources Code section 25539 is proposed to be removed from the Authority cited, and Sections 25500, 25534 and 25534.1 of the same Code are proposed to be deleted from the Reference cited.

§ 1231. Complaints and Requests for Investigation; Filing.

Purpose and Necessity

This section identifies how a complaint or request for investigation is filed. The proposed changes to this section consists of adding a comma to the first sentence of the regulations, and adding the word "and" to subdivision (b)(7). In addition, the reference to "General Counsel" in subdivision (a) is replaced with a reference to "Chief Counsel", to reflect the fact that the name of position has changed. Finally, the phrase "and following" is replaced with "et seq." in order to use a citation format that is consistent with the California Style Manual, which is the state's official guide for styling citations. These are non-substantive changes, designed to correct grammatical or other minor errors in the existing regulation.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that would correct grammatical and other minor errors to the existing language of the regulation. There are no reasonable

alternatives to this language that would lessen any adverse impacts on small business because there are no adverse impacts on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

The changes proposed for this regulation will not have any adverse impact on business because they do not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25321 is proposed to be added as a reference because that section establishes the Commission's authority to impose fines for failure to comply with the Commission's data collection requirements. Because those fines would be imposed as a result of a complaint or investigation proceeding, addition of the provision is necessary to make these references complete. In addition, because a complaint or investigation involving a license granted by the Commission is governed by Section 1237 (adopted in 2003), the Commission proposes to delete from the Authority and Reference notations those statutes governing the siting process. Specifically, Public Resources Code section 25539 is proposed to be removed from the Authority cited, and Sections 25500 and 25534 of the same Code are proposed to be deleted from the Reference cited.

§ 1232. Complaints and Requests for Investigation; Commission Response.

Purpose and Necessity

This section identifies a portion of the process the Commission must follow when a complaint or request for investigation is filed. The proposed changes to this section would specify how service of a complaint or request for investigation should be accomplished, and also incorporate several requirements from the Administrative Adjudication provisions of the Administrative Procedure Act (Govt. Code § 11400 et seq.) We are proposing to include the specific filing requirements (proposed to be located in new subdivisions (a)(2) and (b)) here so that all the requirements applicable to service of complaints and investigations can be found in one place. In addition, the reference to "General Counsel" is replaced with a reference to "Chief Counsel", to reflect the fact that the name of position has changed. Finally, provisions regarding the hearing and noticing for the hearing have been deleted from this section, as they are proposed to be located in a different section (new § 1234.)

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that would more precisely specify the service requirements applicable to the Commission or that would allow readers of the Commission's rules of practice and procedure to be informed of the applicability of the administrative adjudication portions of the Government Code to adjudicative proceedings conducted by the Commission. There are no reasonable alternatives to this language that would lessen any adverse impacts on small business because there are no adverse impacts on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Adding a reference to statutory provisions that are already in effect, and clarifying service procedures that the Commission must follow will not have any adverse impact of business because the change does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25321 is proposed to be added as a reference because that section establishes the Commission's authority to impose fines for failure to comply with the Commission's data collection requirements. Because those fines would be imposed as a result of a complaint or investigation proceeding, addition of the provision is necessary to make these references complete. In addition, because a complaint or investigation involving a license granted by the Commission is governed by Section 1237 (adopted in 2003), the Commission proposes to delete from the Authority and Reference notations those statutes governing the siting process. Specifically, Public Resources Code section 25539 is proposed to be removed from the Authority cited, and Sections 25500 and 25534 of the same Code are proposed to be deleted from the Reference cited.

§ 1233. Answers to Complaints and Requests for Investigation.

Purpose and Necessity

The proposed changes to this section make conforming changes to reflect amendments to § 1231, as well as shorten the time required for a respondent's answer. The Commission has determined that 21 days is sufficient to prepare an answer, and that allowing 30 days can unnecessarily delay resolution of the issues associated with a complaint or investigation.

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Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that would allow the Commission the option of resolving certain complaints and requests for investigation in a shorter time period than is provided for in the existing regulatory provisions. There are no reasonable alternatives to this language that would lessen any adverse impacts on small business because there are no adverse impacts on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Shortening the time period for the answer will not have an adverse economic impact on any business as twenty-one days is sufficient for preparing a response of the nature identified in the regulation. (See 1233(b).)

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25321 is proposed to be added as a reference because that section establishes the Commission's authority to impose fines for failure to comply with the Commission's data collection requirements. Because those fines would be imposed as a result of a complaint or investigation proceeding, addition of the provision is necessary to make these references complete. In addition, because a complaint or investigation involving a license granted by the Commission is governed by Section 1237 (adopted in 2003), the Commission proposes to delete from the Authority and Reference notations those statutes governing the siting process. Specifically, Public Resources Code section 25539 is proposed to be removed from the Authority cited, and Sections 25500 and 25534 of the same Code are proposed to be deleted from the Reference cited. Finally, Public Resources Code, sections 25451 and 25452 are proposed to be deleted from the Reference cited because those statutes have been repealed.

§ 1233.5. Staff Assessment.

Purpose and Necessity

This is a new section that makes explicit the Commission's ability to request a staff assessment of a complaint, request for investigation, and answer. The subject of a complaint or investigation can be, on occasion, highly technical in nature, and allowing for a staff assessment will provide the decisionmaker and the public with an objective technical review of the issues. The timeframe established for a staff assessment is seven days after the complaint or request for investigation is served. This section is necessary to more fully describe the process that will occur in a complaint or investigation procedure and to provide guidance about the procedures that must be filed.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that would allow readers of the Commission's rules of practice and procedure to be informed of the process that is applicable when the Commission requests a staff assessment of the complaint, request for investigation, or answer. There are no reasonable alternatives to this language that would lessen any adverse impact on small business because there is no adverse impact on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Adding regulatory provisions governing the process that will be followed in the event that the Commission requests a staff assessment of the complaint, request for investigation, or answer will not have any adverse impact on business, because the change does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The proposed language for this section also contains authority and reference citations. The authority cited includes two statutes that provide the Commission with general rulemaking authority. The sections that are referenced include a Government Code

provision relating to investigations; this section is also referenced in Public Resources Code section 25210, which gives the Commission authority to conduct investigations necessary to carry out its duties. In addition, four sections of the Public Resources Code are referenced, each of which authorizes the Commission to conduct investigations and/or assess fines and penalties for non-compliance with various rules adopted and enforced by the Commission.

§ 1234. Notice and Hearing.

Purpose and Necessity

Although the proposed language is new to this section, it consists primarily of existing provisions moved from § 1232. It also adds new language stating that hearings on a complaint or investigation may begin as soon as 21 days after receipt of the answer. (Existing language states that hearings must begin within 90 days of the receipt by the Commission of the complaint or request for investigation.) The twenty-one day time period provides parties ample time to review the answer (which is filed within twenty-one days of service of the complaint or request for investigation), the staff assessment, if any (which is filed seven days after service of the answer), and prepare for hearings. This timeline allows a reasonable amount of time for resolution of complaints and requests for investigation.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that would provide for the time frame that the Commission believes is appropriate. Complaints can be relatively minor in nature and should not necessarily require long periods of time to resolve. To the extent that additional time may be appropriate in a specific case, Section 1232(b) allows the assigned committee or chairman to extend the timelines. There are no reasonable alternatives to this language that would lessen any adverse impact on small business because there is no adverse impact on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Specifying timelines for the hearings will not have any adverse impact on any business; the language simply makes the process clearer and does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The proposed language for this section also contains authority and reference citations. The authority cited includes two statutes that provide the Commission with general rulemaking authority. The sections that are referenced include a Government Code provision relating to investigations; this section is also referenced in Public Resources Code section 25210, which gives the Commission authority to conduct investigations necessary to carry out its duties. In addition, four sections of the Public Resources Code are referenced, each of which authorizes the Commission to conduct investigations and/or assess fines and penalties for non-compliance with various rules adopted and enforced by the Commission.

§ 1235. Proposed Decision.

Purpose and Necessity

The language in this section consists largely of language that is currently contained in Section 1234. However, there are deletions and additions to that language designed to allow for additional time (7 more days) to prepare a proposed decision for those proceedings which have been heard before an assigned committee or hearing officer. The Commission has found that transcripts are frequently not available for a week or more following the hearing, making completion of a proposed decision within fourteen days extremely difficult. Providing for an additional week should alleviate this problem without unduly extending the time required for resolution of a complaint or request for investigation. The Commission also proposes to delete language describing the basis of the decision and the service requirements for the decision, as they are unnecessary; the Commission is fully aware of the procedural requirements imposed upon it by the administrative adjudication provisions of the Administrative Procedure Act.

In addition, existing § 1235 is proposed to be deleted, with the language currently included in that section moved to a new section § 1236.5.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that would address the time in which a transcript of a hearing is available. There are no reasonable alternatives to this language that would lessen any adverse impact on small business because there is no adverse impact on small business.

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Evidence Supporting Adverse Economic Impact Finding on Business

Allowing the Commission additional time to prepare a proposed decision will not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Specifically, Public Resources Code, section 25218(e) is added to the Authority notation; as it provides the Commission with general rulemaking authority. Several sections are added to the reference citations, including one provision of the Government Code and one provision of the Public Resources Code that authorize investigatory proceedings, and four additional provisions of the Public Resources Code that also authorize specific types of investigatory proceedings.

§ 1236. Commission Decision.

Purpose and Necessity

The proposed changes to this section reflect the proposed change to § 1235, allowing a slightly longer period of time to prepare a decision when the matter is heard before the full Commission.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that would accommodate the slighter longer period of time that is appropriate for preparation of a decision, given the time in which transcripts are available. There are no reasonable alternatives to this language that would lessen any adverse impact on small business because there is no adverse impact on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Allowing the Commission additional time to prepare a proposed decision will not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Specifically, Public Resources Code, section 25218(e) is added to the Authority notation, as it provides the Commission with general rulemaking authority. Several sections are added to the reference citations, including a provision of the Government Code that authorizes investigatory proceedings and four additional provisions of the Public Resources Code that also authorize specific types of investigatory proceedings.

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§ 1236.5. Public Participation and Intervention.

Purpose and Necessity

This new section consists of language moved from § 1235, while clarifying that the Commission has the discretion to grant or deny a request for intervention, consistent with Cal. Code Regs., tit. 20, § 1207.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that ensure that readers understand that the decision to grant intervention pursuant to Section 1207 is discretionary. There are no reasonable alternatives to this language that would lessen any adverse impact on small business because there is no adverse impact on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Adding a reference to discretionary nature of the Commission's determination on intervention will not have any adverse impact on business, because the change does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The proposed language for this section also contains authority and reference citations. The authority cited includes two statutes that provide the Commission with general rulemaking authority. The sections that are referenced include a Government Code provision relating to investigations; this section is also referenced in Public Resources Code section 25210, which gives the Commission authority to conduct investigations necessary to carry out its duties. In addition, five sections of the Public Resources Code are referenced, each of which authorizes the Commission to conduct investigations and/or assess fines and penalties for non-compliance with various rules adopted and enforced by the Commission.

Chapter 3 Data Collection

Article 1. Quarterly Fuel and Energy Reports

§ 1301. Title

Purpose and Necessity

The Commission proposes to delete the reference to Public Resources Code, section 25320, as that section has been repealed. The repealed section was part of Chapter 3 of Division 15 of the Public Resources Code, which was replaced in its entirety with the adoption of SB 1389 (Stats. 2002, ch. 568). The new statutory provisions also provide the Commission with broad data collection authority, and the Commission has decided to keep the structure of the Quarterly Fuel and Energy Reports with the modification discussed below, as those reports have proved to be an effective means of collecting short-term, historical energy data.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to this language that delete the reference to a statute that has been repealed and replaced by new provisions. In addition, there are no alternatives to this language that would lessen any adverse impact on small business because there is no adverse impact on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Deleting the reference to a repealed statute will not have any adverse impact on business, because the change does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted because those sections are not implemented by this regulation. The specific references to subdivision (a) of Public

Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, 25303, and 25324. Public Utilities Code, sections 9615 and 9620 are added because they are implemented by regulations contained in Article 1.

§ 1302. Rules of Construction and Definitions.

Purpose and Necessity

The changes contained in this section are designed to update the definitions used in Article 1 and Article 2 of Chapter 3, and to reflect changes in the structure of California's energy market. The primary focus of the proposed changes to this section is the Commission's objective of defining reporting requirements by market function. Consistent with the guidance provided in subdivision (c) of Public Resources Code, section 25320, the Commission believes that similarly-situated market participants should be subject to similar data submission requirements. Most of the changes to existing regulations and the addition of new terms are designed to meet that objective. In addition, the Commission has proposed some amendments that reflect changes in underlying statutes or references, or clarification of existing language.

Early workshops on draft proposal to change the regulations convinced us that it would be easier to read the amended definitions if the existing regulations were deleted in their entirety and replaced with new language, even where only minor changes are proposed. Thus, although all the definitions are underlined, many of them are existing definitions; the use of underline is only necessary because the section has been reorganized, and definitions numbered and moved.

The definitions of the following terms in subdivision (b) are unchanged; since they are unchanged, no discussion of these terms is required:

- (b)(3) company
- (b)(5) core customer
- (b)(13) EIA
- (b)(14) electric generator
- (b)(16) electric utility
- (b)(17) end user
- (b)(18) Executive Director
- (b)(19) fuel cost
- (b)(20) fuel use
- (b)(21) gas processor
- (b)(22) gas retailer
- (b)(23) gas service area

- (b)(24) gas utility
- (b)(26) gross generation,
- (b)(27) hourly demand
- (b)(31) interchange
- (b)(32) interstate pipeline
- (b)(33) interstate pipeline company
- (b)(38) monthly system peak demand
- (b)(39) nameplate capacity
- (b)(40) natural gas liquids
- (b)(41) natural gas sales
- (b)(42) net generation
- (b)(43) non-core customer
- (b)(45) NAICS code
- (b)(48) person
- (b)(49) plant use
- (b)(52) prime mover
- (b)(53) stocks
- (b)(56) UDC

The definitions of the following terms in subdivision (b) are amended:

- (b)(1) California offshore lands
- (b)(2) cogenerator
- (b)(4) control area
- (b)(6) customer
- (b)(7) customer classification code
- (b)(8) customer sector
- (b)(10) demand
- (b)(12) distribution service area
- (b)(30) hourly system demand/hourly system load
- (b)(36) losses
- (b)(37) major customer sector
- (b)(44) NAICS
- (b)(46) outer continental shelf
- (b)(50) power plant/electric power plant
- (b)(51) power plant owner
- (b)(54) submitted

In the definition of “California offshore lands” in subdivision (b)(1), the phrase “tidal waters” is changed to “lands” to reflect the terminology used in the statute referenced in that subdivision. This change is necessary to ensure that the regulation is consistent with statutory language. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

In the definitions of “cogenerator” in subdivision (b)(2), “losses” in subdivision (b)(36), “power plant” in subdivision (b)(52), and “power plant owner” in subdivision (b)(51), the original language has been modified by the deletion of the word “electric” in front of “power plant”; the modifier is unnecessary as the definition of power plant (found in subdivision (b)(5)) already incorporates language that makes it clear power plants generate electricity. This change is necessary to reduce redundancy. . There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of “control area” in subdivision (b)(4) has been modified to reflect the fact that the regional forum for promoting regional electric service reliability in Western Canada and the Western United States is the Western Electric Coordinating Council, a successor entity to the Western Systems Coordinating Council cited in the existing language. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of “customer” in subdivision (b)(6) is amended to delete the phrase “active revenue meter” and to identify UDCs, LSEs, and gas utilities, rather than electric utilities and gas utilities as the entities with customers. “Active revenue meter” is not necessary language as all customers of UDCs, LSEs, and gas utilities have active billed accounts. UDCs and LSEs are specified rather than electric utilities because one of the major objectives of this rulemaking is to distinguish filing requirements based on the type of market role an entity plays. Under electricity market restructuring, retail electricity services can be provided by any LSE, not just a utility, with UDCs providing distribution services. For purposes of specifying data submission requirements, the Commission proposes to distinguish between LSEs and UDCs. Thus, these amendments are necessary to achieve the objective of establishing filing requirements based on market function.

In addition, the Commission proposes to add to subdivision (b)(6) definitions of two subcategories of customers – bundled customers and unbundled customers. “Bundled customer” is defined as someone who receives generation services from the same LSE from which it receives distribution services. “Unbundled customer” is defined as an end-user who receives generation services from one LSE and transmission and distribution services from a UDC that is a separate entity from that LSE. These definitions reflect the fact that during energy market restructuring, some customers in California signed up for “direct access”, and began to receive their electricity from an unregulated entity, while continuing to receive distribution services from a local UDC. Although enrollment of new direct access customers is currently not allowed, there are still a significant number of these customers, who buy their electrical energy from one company (Strategic Energy or Sempra, for example), and receive that electrical energy through the distribution system of the UDC in whose service territory they are located (SDG&E or PG&E, for example). These new definitions are necessary because other proposed amendments require UDCs to distinguish between the two types of customers. (See, e.g., Section

1306.) These definitions were developed in discussions with UDCs and LSEs, and reflect the current electricity market structure. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of “customer classification code” in subdivision (b)(7) has been modified from the original language to delete the reference to SIC codes, as those are no longer used, and to add five additional codes that are necessary for Commission analytical purposes, but which are not distinctly identified in the NAICS classification system. Similarly, in the definition of “customer sector” in subdivision (b)(8), there are modifications to the NAICS codes identified in order to reflect updates to that classification system. The definition of NAICS itself, found in subdivision (b)(44) is updated to reflect the fact that the classification system was revised in 2002, and that the revision was itself updated earlier this year. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of “demand” in subdivision (b)(10) is amended to include a definition of gas demand, as gas demand data is required under these regulations. The gas definition is parallel to the electricity demand definition. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

In subdivision (b)(12), the definition of “electric service area” is changed to “distribution service area”. This change is proposed to reflect the functional roles the various entities play in the current electricity market. UDCs, by definition, distribute electricity, and it makes more sense to call the area into which they provide this service a distribution service area, rather than an electricity service area. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of “hourly system load” in (b)(30) has been modified slightly from the definition of “system hourly demand.” First, the word “load” is used in lieu of “demand” because the information we are referring to is information about loads. (See definitions of “hourly demand” and “hourly load.”) In addition, the word “electric utility” is changed to UDC to reflect the fact that we are distinguishing between different types of entities in the electricity market, and that it is UDCs specifically that have system loads. The definition of “electric utility” is very broad, and encompasses entities that do not have system loads. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of “major customer sector” in (b)(37) has been amended so that the industrial major customer sector categories are collapsed, reflecting the fact that we no longer distinguish between the assembly and process industries in our forecast. This amendment should make reporting easier for filers. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of NAICS in subdivision (b)(44) is amended to update the reference for the codes. The 2002 manual, which is the most recent, is now referenced, along with the revisions to the 2002 manual, which become effective January 1, 2007. These documents are *North American Industry Classification System*, Executive Office of the President, Office on Management and Budget (2002); <http://www.census.gov/epcd/naics02/>, as revised for 2007 pursuant to 71 Fed. Reg. 28532 (March 16, 2006), <http://www.census.gov/epcd/naics07/index.html>. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of “outer continental shelf” in (b)(46) is modified to correct the citation, so that only the specific section containing the referenced definition is included. This change is necessary to ensure that there is no ambiguity about the definition being references. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

The definition of the term “submitted” in (b)(54) is amended to reference all of Section 1303, not only subdivision (b) of that section as well as Section 1342, as these other subdivisions and section also contain guidance for data submittals. This change is necessary to ensure that these regulations are internally consistent. There are no reasonable alternatives to the revisions to this definition and the change will not have any adverse impact on business, including small business, as it does not affect the rights of or requirements applicable to any business, including small business.

Finally, the definitions of the following terms in subdivision (b) are new:

- (b)(9) customer group
- (b)(11) distribution service
- (b)(15) electric transmission system owner
- (b)(25) generation service
- (b)(28) hourly load
- (b)(29) hourly sector load
- (b)(34) LSE – distinguish from electric retailer
- (b)(35) local publicly-owned electric utility
- (b)(47) peak demand

(b)(55) tolling agreement

In subdivision (b)(9), we provide a definition of “customer group”, as this proposal includes new language allowing those LSEs that are not UDCs the option of classifying sales data provided pursuant to Section 1306 and forecast data provided pursuant to Section 1345 by customer group rather than by customer sector, which is a much more detailed classification scheme. The definition divides customers into four broad classes, which are commonly used by LSEs. This definition is necessary to provide those entities with flexibility to choose this reporting option. There are no reasonable alternatives to this language that would provide the additional flexibility to filers. This change will not have any adverse impact on business, including small business, as it implements a change that allows any affected small business additional options for filling certain types of data.

The Commission proposes to add a definition of “distribution services” in subdivision (b)(11). This definition is necessary because the new definitions of “bundled customer” and “unbundled customer” in subdivisions (b)(6)(A) and (B) refer to distribution services. Similarly, a definition of “generation service” is provided in subdivision (b)(25), as this term is also used on the definitions in (b)(6)(A) and (B).

The definition of “distribution service” refers to the construction, operation, and maintenance of the “wires” used to transmit electricity to end-users. This definition reflects the distribution of functions that exists in the electricity market – UDCs provided these services to end users within their service areas, regardless of whether they procure the electrical energy that is consumed. Similarly, the definition of “generation services” refers to the arrangements made by LSEs to procure electrical energy for their customers’ use. Although this electrical energy is transmitted to customers by a UDC providing distribution services, the procurement function can be conducted by either the UDC or by an independent LSE. These definitions make those distinctions clear. There are no alternatives that would make this distinction -- which is reflected in various filing requirements – clear. This definition will not have any adverse impact on business, including small business, because the definition merely defines a distinction that already exists in the electricity market. Thus, providing the definition will not affect the rights of or requirements applicable to any business, including small business.

In subdivision (b)(15), there is a new definition of “electric transmission system owner.” This definition is included because the Commission proposes to establish reporting requirements by market function; amendments included in Article 2 of Chapter 3 of these regulations include specific reporting requirements applicable to electric transmission system owners. The definition is taken from a document entitled: *Glossary of Terms Used in Reliability Standards*, adopted by the North American Reliability Council (NERC) on February 8, 2005. NERC is an organization that ensures the reliability of the bulk electric system in North America. (The Western Electricity Coordinating Council, which is the Reliability Council for the Western Interconnection, which includes California, is a member of NERC.) The definition is available on line at: http://www.nwpp.org/pdf/Glossary_Clean_11-3-04.pdf. There are no alternatives that would make this definition any clearer than using the existing definition. This definition

will not have any adverse impact on business, including small business, because it will not affect the rights of or requirements applicable to any business, including small business.

In subdivision (b)(28), the Commission proposes a definition of the phrase “hourly load.” This definition is necessary because we propose to require some filers to provide hourly load data. Loads refer to hourly demand over time, and must be distinguished from instantaneous demand, which is already defined as “hourly demand”. In other words, hourly demand refers to a demand for electricity in a single hour, and hourly loads are the pattern of those hourly demands over time. Hourly load patterns are very important to track, as electricity consumption varies over time, and understanding what the electrical needs of the state are requires an understanding of these patterns. There are no alternatives to this definition that would create the distinction needed to capture this concept. The new definition will not have any adverse impact on business, including small business, because it merely reflects a way of characterizing electricity consumption. Thus, providing the definition will not affect the rights of or requirements applicable to any business, including small business.

In subdivision (b)(29), we provide a new definition of “hourly sector load.” This definition is necessary because we propose to require the filing of hourly sector load data in Section 1344. The definition is tied to the sectors that are defined in subdivision (b)(9); collecting hourly sector loads allows us to track how loads change by sector over time, which is critical information in projecting future energy needs. This definition is distinguished from the definition of “hourly system load”, because the latter includes losses that occur as electricity is transmitted over the transmission and distribution system. Hourly sector load represents the energy actually consumed by end-user within a given sector, while hourly system load represents that load plus the amount of electricity that is lost in the transmission and distribution process. There are no alternatives to this definition that would identify this information in a manner that allows us to collect sector data at the end user level, with and without losses. The new definition will not have any adverse impact on business, including small business, because it is a characterization of electricity consumption. In addition, the term only applies to filing requirements that must be met by UDCs with a peak load of 1,000 MW or more, which exceeds the definition of small business as provided in Government Code section 11342.610. Thus, providing the definition will not affect the rights of or requirements applicable to any business, including small business.

In subdivision (b)(34), there is a new definition of LSE. It is similar to the definition of electric retailer; this new definition will be in lieu of the definition of electric retailer. The term “LSE” is more accurate because we need data from entities that provide electricity for end-use through arrangements other than retail sales. Similarly, we propose to add the word “provides” in subdivision (a) to ensure that we are including those entities that provide electricity to end users through arrangements other than retail sales. In addition, we propose to eliminate the phrase “generates and consumes electricity on-site in California (except for electricity consumed for electric power plant operations)” because there are a series of data submission requirements that should not

apply to these entities. For example, entities that are generating electricity solely for their own benefit should not be required to provide demand forecasts or conduct load metering. Finally, we added language providing that the definition of LSE does not include the owner or operator of a cogenerator. This language is necessary because, as with the self-generators, we do not require the same data submissions from cogenerators that we do from other LSEs. They are therefore eliminated from this definition.

There are no alternatives that would accurately describe this category of market participants consistently with either the current or proposed data collection regulations. The new definition will not have any adverse impact on business, including small business, because 1) the only entity that we are aware of that would be classified as an LSE under the proposed definition but not as an electric retailer is the Western Area Power Administration, which is an agency of the Department of Energy, and 2) the exclusion of the entities currently included in the definition of electric retailer will result in the elimination of reporting requirements for those entities under proposed amendments to Section 1306. These reporting requirements would be re-imposed on the same entities pursuant to Section 1304, but the scope and filing requirements under Section 1304 are the same or less than those included in Section 1306, depending on the size of the entity.

In subdivision (b)(35), the Commission proposes to add a definition of local publicly-owned electric utility. This definition is necessary because the term is proposed to be used in new Section 1311 of these regulations. The definition parallels that which is provided in Public Utilities Code section 9604, because the statutory section being implemented in Section 1311 (Public Utilities Code section 9615) is in the division of the Public Utilities Code to which this definition applies (Division 4.9). There are no alternatives to this definition that would provide the correct definition of local publicly owned electric utility. This new definition will not have any adverse impact on business, including small business, as it reflects statutory language that is already in effect.

In subdivision (b)(47), the Commission proposes to add a definition of peak demand. This term is currently used in the regulations but is not defined. Provision of a definition will improve the clarity of the regulations. The definition includes a general description of the term, and then explains how it is to be calculated for each of the two types of entities that must provide peak load information to the Commission. Fundamentally, peak load is the highest load for any given period of time. “Net energy for load” is a standard phrase in the electricity industry, referring to generation, plus energy received, minus energy exported. (*Glossary of Terms Used in Reliability Standards*, NERC, 2005; the internet site at which the glossary can be accessed is http://www.nwpp.org/pdf/Glossary_Clean_11-3-04.pdf.) In asking for “integrated net energy for load”, we are in essence asking for the average load across the time specified time period, in this instance, one hour. For UDCs, peak demand is the sum of the individual peak demands provided by the LSEs within that service area. There is a similar definition for LSEs, but we propose to specifically identify that hourly losses must be included in the data for these entities. In the past, some LSEs have provided an average number for losses, which is not sufficient for our analysis of peak demand issues.

There are no alternatives to this definition that would identify this information in a manner that allows us to collect peak demand data for UDCs and LSEs at the level that allows us to analyze peak demand trends. The new definition will not have any adverse impact on business, including small business, because it is a characterization of electricity consumption. Thus, providing the definition will not affect the rights of or requirements applicable to any business, including small business.

Finally, subdivision (b)(55) contains a proposed definition of the phrase “tolling agreement.” This definition is necessary to reflect new reporting requirements applicable to such agreements proposed in Section 1304 and Section 1308. Under these agreements, which are in common use, an entity that will buy the output of a power plant for resale procures the fuel source for the electricity production. The gas is not “purchased” by the owner or operator of the power plant, so he or she does not have information on the monthly fuel costs associated with the tolling agreement and can only report the total costs of the fuel he or she directly procures. The Commission needs to know the amount of fuel use that is either procured by the generator or supplied through a tolling agreement to derive the unit cost of the procured fuel (for example, dollars per million BTU for natural gas). This unit cost estimate will be used to evaluate market price and cost-hedging trends, which is important for developing price forecasts. Failure to account for gas consumed pursuant to these agreements would result in an incomplete, and potentially inaccurate, assessment of fuel consumption patterns and forecasts. There are no alternatives to this definition that would allow us to include information about gas consumption pursuant to these regulations in our data collection efforts. This definition will not create any adverse impact on business, including small business, because it is a definition and doesn’t impose any substantive requirements. Moreover, the only entities reporting tolling agreement information are owners of power plants that generate 50 megawatts or more, and gas utilities, both of which are explicitly excluded from the definition of small business in Government Code section 11342.610.

The following definitions that are currently included in Section 1302 are proposed to be eliminated, as they would not appear in the amended regulations: electricity sales, firm capacity, firm energy, local distribution company, and standard industrial classification system. Because they no longer appear in any of the regulations governing data submission, they are unnecessary. There is no alternative to their repeal that would eliminate unnecessary terms. Because the terms are no longer used, repeal of these definitions will not have any adverse impact on business, including small business.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives that would provide the clarity that these changes provide. As the changes are definitional only, they will not have any effect on business, including small business. If a change in definition affects a reporting requirement pursuant to one of the other sections of these regulations, that effect is addressed in the discussion specific to that section.

Evidence Supporting Adverse Economic Impact Finding on Business

The changes do not change the responsibilities or rights of any filer; where a change in definition affects a reporting requirement imposed under one of the other sections of these regulations, that effect is addressed in the discussion specific to that section. Therefore, as noted above, there are no adverse impacts on business associated with the proposed amendments to this subdivision.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be broadened to all statutory definitions contained in Section 25100 – 25141. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, 25303, and 25324. Also included are statutes concerning the Commission’s responsibility to designate transmission corridors (Sections 25330 et seq. of the Public Resources Code). Public Utilities Code, sections 9615 and 9620 are proposed to be added because they are implemented by regulations contained in Article 1.

§ 1303. General Rules for All Reports.

Purpose and Necessity

This section identifies procedures and filing requirements that are applicable to all reports submitted pursuant to this Article. The Commission proposes a number of amendments to this section.

First, in subdivision (a), the phrase “entity subject to reporting requirements” is used in lieu of individually specifying each type of entity that is subject to reporting requirements as a way of making the sentence a bit shorter. It does not change any rights or responsibilities. The other changes to this subdivision improve the clarity of the language by making clear that the requirements specified in this section are in addition to any reporting requirements included in this Article.

In subdivision (b), a reference to the 1990 version of the Forms and Instruction (F&I) is omitted as it is now obsolete; the Executive Director has issued several versions of the F&I since that time. Throughout the regulation, with the exception of subdivision (m), the reference to other specific sections of this Article has been replaced by a reference to

the Article generally; this change makes the regulation slightly shorter without changing any substantive requirements.

In subdivisions (c) and (d), language has been added to reflect that fact that individual sections may include an exception to the general requirements concerning filing dates. Section 1311 is an example of such a section. Additional specific language allowing publicly-owned utilities to file certain reports on an alternative timeline was added to subdivision (e) at the request of these entities. This language accommodates the fact that they may operate on a fiscal year basis, and the calendar-year filing dates that would otherwise be applicable to them make little sense. In subdivision (f), the reference to specific sections is replaced with a reference to “this article”, avoiding the need to amend the reference if a new section is subsequently added to this Article. A parallel change is proposed for subdivisions (i) and (k).

Language in subdivision (g) regarding delegation of reporting requirements has been deleted because the specific language – applicable to electric and gas retailers – is not necessary. The general language that will be retained is sufficient to permit delegation. In addition, because the market structure has changed, keeping the language proposed to be deleted would require significant re-wording to accurately capture the affected entities and their relationship to one another. As it is not necessary to do so, the Commission proposes to simply delete the language altogether. The amendment to subdivision (l)(6) reflects the names of the entities subject to reporting requirements in Article 2 of Chapter 2; the current list is inaccurate.

Finally, the amendments to subdivision (m) are designed to accomplish three goals. First, the citations are updated as a result of proposed changes to the sections that require customer classification coding, and to reflect the names of the market participants that are subject to these requirements. Second, the proposed amendments now identify a deadline for the study that may be required to verify the accuracy of the customer classification coding. Currently, there is no time specified, leading to uncertainty about when it is due. The Commission believes that three months is a sufficient period of time to allow preparation of such a study. Finally, we propose to add new language that requires a course of action when the accuracy standards that are currently required are not being met. These accuracy requirements are extremely important, as the Commission’s forecasting analyses rely heavily on tracking use patterns and changes by customer classification (i.e., the types of end uses associated with electricity and gas consumption within the State). It makes little sense to impose accuracy requirements without providing a process for correction when those standards are not met. The new language requires submission of a plan to meet those requirements; the plan is required six months after notification by the Commission’s Executive Director of the need to a study, and must identify specific measures to ensure the accuracy standards are met and a commitment to implement those measures within a year. This provides a reasonable amount of time for UDCs to study and correct accuracy problems.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives that would provide the clarity that these changes provide. With respect to subdivision (m), the only alternative considered that would ensure that the existing accuracy standards are met was providing a shorter time for corrective action. The Commission decided to allow the longer period of time, in order to allow for a thorough resolution of the problem, including collaboration between the UDCs and Commission staff. There are no reasonable alternatives to the proposed language that would lessen any adverse impacts on small business because there is no adverse impact on small business. The only change that creates new responsibilities applies to UDCs. As discussed above, all UDCs are either excluded from the definition of small business, either because they are not independently owned and operated, or, if they are, because they generate or transmit in excess of 4,500 MWh of electricity each year. (Gov. Code, section 11342.610(a)(1) and (b)(8).)

Evidence Supporting Adverse Economic Impact Finding on Business

The changes do not create an adverse economic impact on business. The changes to subdivision (m) do impose reporting requirements that have costs associated with them. Specifically, a plan for corrective action is required when a study (already required under the existing regulatory language) shows that certain accuracy requirements are not being met. The Commission estimates that of the total of 57 entities that could be required to develop a plan (50 of those are POU's, and addressed in the Fiscal Impact Statement), approximately one might be asked to do so every three years. We also estimated that such a plan would require 40 hours of work, for a cost of \$3,000 per plan. Spread over the 7 businesses, this creates an average cost of \$18 per year per business, for a statewide total of \$937 over 10 years. These costs are extremely minor and are likely the same or less than that those created by the need for Commission staff to consult with the utilities to address data difficulties under the current regulations. The costs associated with compliance by publicly-owned utilities are identified in the Fiscal Impact Statement portion of the Form 399.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted as those sections are not implemented by this regulation. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303. Public Utilities Code, sections 9615 and 9620 are added because they are implemented by regulations contained in Article 1.

§ 1304. Power Plant Reports.

Purpose and Necessity

Section 1304 establishes reporting requirements for information about power plants. The Commission uses this information in order to develop and maintain an understanding about the types, sizes, operating characteristics, and location of generating units that operate within the State. The regulation is divided into two main parts, and the Commission proposes changes to both parts. The first part of the regulation requires power plant owners to file certain information about plants they own. The second part of the regulation requires UDCs to report on power plants within their service area. Because operation of the distribution system requires the UDCs to have detailed information about the generation sources within their system, UDCs can provide important information about the plants, how they operate, and how they are interconnected to the UDC's distribution system.

There are several types of changes to this section. First, throughout the entire section, the phrase "electric power plant" is replaced with "power plant." See the discussion above addressing proposed changes in Section 1302 to the definitions of cogenerator, losses, power plant, and power plant owner for an explanation of the purpose of this change. Second, there are minor changes to subdivision (b)(2) governing the reporting of generation and fuel use. Specifically, the requirement for available capacity is proposed to be deleted, because this requirement was difficult for filers to comply with -- available capacity during system peak is difficult to measure, because it requires coordination with multiple control area operators. Given the relatively poor quality of data we received as a consequence of this difficulty, the Commission has determined that the requirement serves no useful purpose.

In addition, more specific requirements for cogeneration facilities are specified. (Cogeneration facilities produce electricity and thermal energy for industrial or commercial heating or cooling purposes.) In order to prepare accurate forecasts of gas consumption, and to understand how cogeneration facilities contribute to electricity production, the Commission needs to know how much of the fuel used in cogeneration is for thermal energy production and how much for electricity production. The lack of information about the breakdown of fuel consumption at cogeneration facilities has caused a gap in our understanding of what gas and electricity are being consumed for within the state. This in turn, adversely affects our ability to identify trends in consumption and forecast future needs. This amendment -- identified in subdivision (4) of (a)(2)(A), (B), and (C) allows us to fill that gap. Similarly, in order to more closely track consumption trends, we are asking for on-site consumption to be classified by customer classification code.

During Commission workshops conducted in order to discuss the proposed changes to the regulations, power plant owners expressed confusion about reporting sales of electricity to end-users. They commented that they don't always know who the end user is, as they may sell into the wholesale market. To address this concern, subdivisions 5 and 7 of

(a)(2)(A), (B), and (C) were modified, to clarify that electricity consumption on site other than for plant use, and electricity consumption by end users also receiving thermal energy from cogeneration plants, should be reported to the Commission, classified by customer classification code. This parallels the requirement to provide on-site electricity consumption by customer classification code in subdivision (a)(2)(A) – (C) 5. Sales to the wholesale market or LSEs are explicitly excluded.

Finally, in subdivision (a)(2)(C)(8), applicable only to facilities that generate 50 MW or more, we propose to collect more precise information about fuel use costs by requiring identification of that portion of fuel consumed that is provided via a tolling agreement (in which a buyer provides the gas to the generating facility in exchange for the rights to specific amounts of electricity generated by that facility). Many of the generators now have tolling agreements which provide that the buyer of electricity will supply the fuel for the power plant in return for a specified amount of output from the plant. (These agreements did not exist before electricity market restructuring, when generators simply purchased the gas consumed at their facilities.) These generators do not have information on the monthly fuel costs associated with a tolling agreement and will only report the total costs of the fuel they themselves procure. The Commission needs to know the amount of fuel use that is both procured by the generator and supplied through a tolling agreement to derive the unit cost of the procured fuel (for example, dollars per million Btu for natural gas). This unit cost estimate will be used to evaluate market price and cost-hedging trends, which is important for developing price forecasts. The Commission proposes to collect information about the volume of gas used from generators in this section, as well as information about the volume of gas provided in Section 1308. (That requirement is addressed in the discussion of that section, found below.)

Subdivision (a)(3) is a new section requiring the reporting of certain environmental information associated with electricity generation. Public Resources Code section 25303(b)(1) requires the Commission to include in its integrated energy policy report an assessment of the environmental performance of the electric generation facilities of the state. This new language will allow the Commission to collect the information necessary to conduct those assessments on a regular basis. The proposed language is the result of numerous discussions with the affected entities, and represents a careful attempt to obtain the information we need with a minimal amount of burden imposed on the filers. There are three categories of information identified: information about water supply and discharge, information about impacts to legally protected species associated with operation of power plants, and information about notices of violation that are provided by any state or federal regulatory agency. The first set of requirements is addressed to water supply and wastewater discharge information and is applicable to facilities with a generating capacity of 20 MW or greater. This size limit was selected because facilities of this size are likely to use and discharge a significant amount of water. The second set of requirements is directed at information related to impacts on biological resources and is applicable to facilities that generate one megawatt or more. The third requirement identifies information about notices of violations of laws of permit conditions protecting environmental quality and/or public health; it too is directed at facilities with a generating capacity of one megawatt or more. The smaller generating capacity was selected for the

latter two sets of information because of concerns about biological impacts associated with some of the smaller renewable facilities, especially wind generators.

For all environmental data submission requirements, no new reports would be required. The regulations specify that filers need only provide the Commission with copies of reports and filings made elsewhere that include the specific information identified in this section. Not requiring independent studies or analyses should minimize costs of compliance with these requirements.

With respect to water supplies, these regulations identify information about the type of cooling technology being used (different types of cooling technologies use vastly different amounts of water), and the name or source of the water supply. For surface water bodies, the name as provided on the United States Geological Survey 7.5 minute maps is required. These maps are at a scale of 1:24,000 and are widely used. For well water, the regulation incorporates by reference a Department of Water Resources publication that explains how well numbers are assigned and provides directions for obtaining well numbers from DWR. (*Water Facts; Numbering Water Wells in California*, California Department of Water Resources (2000); this publication can be found at http://watersupplyconditions.water.ca.gov/pdf/water_facts_7.pdf.) Groundwater (which is extracted from wells) that is used for power plant cooling is not regulated as extensively as surface and ocean waters are, and the Commission seeks to better understand well locations and volumes of groundwater used for cooling. In addition, the proposed regulation would require the submittal of daily average and maximum water use and monthly and annual usage, and identification of the metering technology used to measure water use. This information will allow us to track general patterns in water use, both by type and quantities of water used.

The wastewater discharge information specified includes wastewater characteristics, disposal systems, pollution control measures, where the wastewater is disposed, and volumes of the discharge. The U.S. Environmental Protection Agency's specifications for describing the physical and chemical characteristics of water are contained in 40 CFR, section 136.3; we ask for any information prepared using the method so that we can assess and track wastewater quality issues associated with electricity generation. In sum, this information will allow the Commission to track broad patterns in wastewater disposal quantities, methods, and characteristics.

The information about biological resource impacts is limited to reports of "take" of protected species pursuant to the California Endangered Species Act, the federal Endangered Species Act, the federal Marine Mammal Protection Act, and Bald Eagle Protection Act, as well as biomass destroyed as a result of once-through cooling. Different types of power plants will have different types of impacts on biological resources; for example, solar facilities in the desert may adversely affect San Joaquin kit fox or desert tortoise, whereas wind facilities may cause bird kills. Plants using once-through cooling typically impinge and/or entrain large amounts of biomass from estuaries, bays, and the ocean, including endangered species. As with the water supply and waste water discharge impacts, understanding biological impacts associated with

California's generation fleet is important to understanding the environmental impact of the electrical generation system. In addition, the Commission may use this information to determine whether certain resource mix goals and policies are appropriate. As with all of these environmental reporting requirements, the Commission is seeking copies of reports that are filed with environmental regulatory agencies or permitting agencies, and is not requiring that new field studies be conducted. Finally, section (a)(3) requires the reporting of any violation of an environmental or public health statute either identified by a regulatory agency during the previous calendar year or under investigation at the time of reporting. This information will help the Commission determine if there are patterns of any particular environmental or public health problems being identified or investigated by regulatory agencies. This too will be helping in determining whether a particular resource mix goal or policy is appropriate.

Finally, there is new language in subdivision (b) of this section regarding UDC reports about generating facilities located within its service area. First, a size limit of 100 KW is added, so that UDCs are not required to include information about very small facilities. Second, language is added to clarify that to the extent that this information is static, it need not be re-filed each year; only a reference to a previous filing specifying the required information is needed. This language is duplicative of language in Section 1303 (h), but participants in workshops held prior to the publication of the Notice of Proposed Action for this rulemaking suggested that it would be useful to repeat that language here. In addition, information about the operating mode, technology types, fuel types, and interconnection agreement is specified. This information is necessary to catalogue the different types of generation facilities and their location within the transmission grid. We are already receiving this information voluntarily from several UDCs and have found it to be valuable for the reason stated above; adding this language will require that it be consistently reported by all UDCs.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to the proposed changes to fuel use and generation data specified in (a)(2)(A)(B) and (C) that would provide the increased accuracy and specificity of data identifying end uses and natural gas use associated with electricity generation. Specifically, the information identified in new subdivision (a)(2)(A)4 and 7 is the only way for the Commission to obtain more accurate information about natural gas and electricity use at cogeneration facilities. Similarly, there are no alternatives that would result in our having the information about natural gas use under tolling agreements that is identified in subdivision (a)(2)(C)8. In any event, because the Commission has determined that there are no generators that are subject to these reporting requirements that are small businesses, there are no reasonable alternatives that would lessen any adverse impacts on small businesses.

With respect to environmental information, the Commission considered and rejected requiring power plant owners to produce information for the Commission regardless of whether that information is reported elsewhere. That alternative was rejected as too burdensome. The alternative of deleting the requirements from the proposal altogether

was rejected due to the statutory mandate to track trends in environmental effects of generation in the State. The Commission did not identify any alternatives to including new requirements for UDC reports pursuant to subdivision (b) that would provide information about technology types, fuel types, and interconnection agreements. This information is necessary for us to track the progress of compliance with renewable technology mandates (*See, e.g.,* SB 1078, Stats. 2002, Ch. 516.) and to evaluate the availability of electricity generation facilities that may be needed to ensure system reliability. Because none of the generators that are subject to reporting requirements in this Section are small businesses, there are no reasonable alternatives that would lessen any adverse impact on small business.

Finally, with respect to the reports required of UDCs pursuant to subdivision (b) of this section, the Commission did not identify any alternative that would provide a reasonable size threshold for the reporting requirement or that would allow us to collect information about the type of facility interconnected with the UDC's distribution system. In any event, none of the state's UDCs meets the Government Code definition of small business, as all transmit power well in excess of the 4,500 MWh threshold identified in subdivision (b)(8) of Government Code, section 11342.610. Therefore, the Commission has determined no reasonable alternative to subdivision (b) exists that would lessen any adverse impact on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

The changes to the reporting requirements concerning generation and fuel use -- found in subdivision (a)(2) -- create both additional costs and additional savings.³ Deleting the requirement for available capacity information in subdivisions (a)(2)(A – C)(3) creates statewide savings of more than \$1,000,000 over the life of the regulation. However, adding a requirement in subdivision (a)(2)(A-C)(4) that fuel use associated with thermal energy production and electricity generation be reported by cogenerators will create reporting costs of .5 hours to 6 hours per year per cogenerator (the actual amount of time depends on the size of the cogenerator). Total annual costs are estimated to be \$450 per year for the larger units and \$38 per year for the smallest units. Total statewide costs over the life of the regulation are estimated to be slightly under \$400,000. We do not believe that classifying on-site consumption by customer classification code (required by proposed language in subdivision (a)(2)(A-C)(5)) will cost anything, as it is extremely simple to add that information to the report. The Commission estimates that adding the new reporting requirements found in subdivision (a)(2)((A – C)(7) will create reporting costs of .5 hours to 6 hours per year per cogeneration unit (the actual amount of time depends on the size of the unit). Total annual costs are estimated to be \$450 per year for the larger units and \$38 per year for the smallest units. Total statewide costs over the life of the regulation are estimated to be slightly under \$400,000. Finally, the amendments to

³ There are 335 businesses that own a total of 985 electric generating facilities that may be subject to reporting requirements contained in Section 1304. Because each business owns a different number of plants and the plants they own may be of different sizes, there is no way to estimate the costs by business. Rather than provide costs for each of the companies individually, we have reported costs by generating facility for the generation and fuel use reporting requirements.

subdivision (a)(2)(C)(8) will require 3 hours per year for an annual cost of \$225 per year, and a total statewide costs of \$60,077. The Commission finds that these costs will not create an adverse economic impact on business because they are relatively small. All assumptions are documented in the Economic Impact Statement portion of the Form 399.

With respect to the environmental information that is now proposed to be required pursuant to subdivision (a)(3), the Commission estimates that there will be no adverse economic impact on business.⁴ This is largely due to the fact that the Commission opted to not require the collection of data that is not otherwise being collected, but instead proposes only to require submission of environmental information that is already submitted to other agencies. Thus, the only costs associated with the amendments to this portion of the regulation consist of copying and submission costs. For the water supply and wastewater discharge information identified in subdivision (a)(3)(A)1, the Commission estimates that of the privately-owned plants with a generating capacity of 1 MW or greater, approximately 273 use water for cooling and will need to copy and send reports to the Commission, which will take one hour per year per plant. There are no initial costs associated with this reporting requirement, and the reporting requirement for each plant will cost \$75 per year, for a total statewide cost over ten years of \$156,201. The Commission finds that these costs will not create an adverse economic impact on business because they are relatively small. All assumptions are documented in the Economic Impact Statement portion of the Form 399.

With respect to subdivision (a)(3)(B)1, the Commission estimates that there are 570 privately-owned plants with a generating capacity of 1 MW or more that could be required to report. The Commission has determined that there are no initial costs associated with this requirement and that each plant may be required to respond on average once every three years. Responding would require .5 hours per plant, for an annual per-plant cost of \$13.00, and total statewide costs over ten years of \$54,355. For the impingement reports required by subdivision (a)(3)(B)2, the Commission has determined that there are 17 privately-owned plants with a generating capacity of 1 MW or greater that use once-through cooling and thus may be required by the regional water quality control board to prepare such reports. Providing copies to the Commission will require approximately .5 hours per year per plant for an annual per-plant cost of \$38.00 and total annual statewide costs over ten years of \$4,863. The Commission finds that these costs will not create an adverse economic impact on business because they are relatively small. All assumptions are documented in the Economic Impact Statement portion of the Form 399.

Finally, for providing the Commission with copies of notices of violation and similar reports (required pursuant to subdivision (a)(3)(C), the Commission estimates that there are 570 privately-owned plants that may be subject to this reporting requirement. There are no initial costs associated with this requirement, and each plant might be required to provide such a report on average once every three years. Responding would require one

⁴ For purposes of the estimates prepared for compliance with environmental information (subdivision (a)(3)), we have provided the per-plant numbers. This is because the reporting requirements – imposed by other agencies – are imposed at the plant level, not the facility or the company level.

hour per plant for an annual per-plant cost of \$25, and total statewide costs over ten years of \$108,711. The Commission finds that these costs will not create an adverse economic impact on business because they are relatively small. All assumptions are documented in the Economic Impact Statement portion of the Form 399.

For one subdivision of this section, we were not able to typical annual or initial costs. This exception is found in the estimates provided for subdivision (b)(8) – (11) of Section 1304. That subdivision imposes reporting requirements on UDCs, but the reporting costs are completely dependent upon the number of interconnected generation facilities about which the UDC is reporting, which varies from UDC to UDC. For this one subdivision, there are no initial or annual costs presented, as they will be different for each UDC. Instead, we report the total lifetime costs for the 8 non-POU UDCs by estimating that to report on the 1,135 facilities to which they are interconnected, it will require 568 total hours in the first year to establish the fields in the database, and 8 hours total to provide the information annually thereafter. This creates total statewide costs over ten years of \$47,137.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted as those sections are not implemented by this regulation. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1305. Control Area Operator Reports.

Purpose and Necessity

Control area operators are entities that are responsible for the reliable operation of a portion of the state's electric transmission system called a "control area." A control area is an electrical region that regulates its generation in order to balance load and maintain planned interchange schedules with other control areas and assists in controlling the frequency of the interconnected system in accordance with regional reliability criteria. Some control areas consist of just a single UDC (Imperial Irrigation District, for example) while others consist of aggregated UDC service areas (the California Independent System Operator, for example.) The existing reporting requirements in this section require submission of information about interconnections with other control areas

and interchanges (deliveries of electricity to and from a control area). In this rulemaking, the Commission proposes to amend subdivision (c) to require that quarterly interchange reports include monthly information, rather than information for all three months of the quarter aggregated. This is necessary because there are times of the year when electricity supplies do not greatly exceed demand, creating potential shortfalls. Having monthly information about deliveries into and out of control areas will improve our understanding of the patterns of electricity movement within the State, and about how regional shortages may develop or be alleviated. In addition, as monthly data on system peak demand is required pursuant to subdivision (a), obtaining monthly data for the interchanges will allow us to more closely correlate peak demand and interchange activity.

Subdivision (d) is new, and is designed to help us obtain information about UDCs that become part of a different control area during the year. In order for the Commission to be able to use the data provided in subdivisions (b) and (c) to understand the movement of electricity within the state, we must know which UDCs are part of which control area for each month for which the data is provided. Thus, subdivisions (d)(1) – (3) ask for basic information about the UDCs within each control area, including contact information, so we can follow up in the event that we have additional questions about specific UDC transactions. In recent years, there have been a number of shifts of UDCs from one control area into another. We have no way of knowing about these shifts unless the control area operator tells; this new subdivision will allow us to collect that information. In subdivision (d)(4), we identify updates to information provided to us by the control area operator pursuant to our regulations and provided to WECC, as part of WECC's Control Area Certification Procedure. (*WECC Control Area Certification Procedure*, Western Electricity Coordinating Council (2003); this document is found at ftp://ftp.nerc.com/pub/sys/all_updl/compliance/WECC_Control_Area_Certification_Procedure.pdf) This information is necessary so that we can have a consistent base of information to compare past, present, and future load growth and consumption data.

In subdivision (e), the Commission proposes to require submission of hourly loads for all consumption and losses within each control area. This information will allow us to understand the hourly consumption pattern within each control area, taking into account both end-use consumption and losses. This information is necessary so that we can understand regional patterns of electricity consumption. As with the information provided in subdivision (c), this information will improve our understanding of the patterns of electricity movement within the State, and about how regional shortages may develop, be alleviated, or be affected by consumption and losses.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives that would provide us with the information we need to track electricity consumption patterns within, and electricity transfers to and from control areas. There are no reasonable alternatives that would lessen any adverse impact on small business because there are no adverse impacts on small business. All control area operators are excluded from the Government Code definition of small business pursuant to Section 11342.610(a)(1) and (b)(8).

Evidence Supporting Adverse Economic Impact Finding on Business

In evaluating the economic impact on business attributable to the amendments to this regulation, the Commission found that 3 businesses would be affected and that copying and submitting data to the Commission would cost about \$900 per year for a typical business. Total statewide compliance costs of approximately \$21,000 were based on an assumption of 10 years and a discount rate of 5.25%. All assumptions are documented in the Form 399. The Commission finds that these costs do not constitute an adverse economic impact on business because they are relatively small.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted as those sections are not implemented by this regulation. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1306. LSE and UDC Reports and Customer Classification Reports.

Purpose and Necessity

This section allows the Commission to collect information that ties together electricity sales and deliveries with types of end uses, types and locations of customers, and the costs of providing electricity and distribution services to end-use customers. This information underlies the Commission's forecasts of electricity demand; it allows us to predict the electricity consumption patterns and loads by types of customer, end-use, and location. The existing language of this regulation imposes reporting requirements about customers and sales on electric retailers and requires UDCs to report customer classification information to electric retailers. Both requirements are proposed to be amended in this rulemaking, and an additional reporting requirement added to ensure that the Commission has complete information about non-UDC LSEs operating in an UDC service area.

First, we propose to amend the quarterly reports that are required to be filed by all sellers of electricity to end-users within the State. Specifically, the Commission will now distinguish between UDCs and non-UDC LSEs. This change is in keeping with our objective of establishing reporting requirements for entities by their market function. As

UDCs provide distribution services as well as electricity for end-users, whereas non-UDC LSEs only provide retail electricity services, the reporting requirements for the two groups will be different. We therefore propose to delete the reference to ESPs and electric retailers, and to move the reporting requirements applicable to electric retailers into subdivision (b), which identifies reporting requirements for non-UDC LSEs.

In addition, in the reports required pursuant to subdivision (a), UDCs will be required to include revenue information in their quarterly reports. This information is needed to support the Commission's price forecast. Specifying that UDCs should classify revenue by the same retail classes the UDCs use will allow Commission staff to better evaluate utility price forecasts and compare and contrast those to the staff forecast, allowing additional refinements. UDCs will also be required to report both sales for their retail electricity customers and total deliveries, in order to capture the total amount of electricity consumption within the UDC's system. This is in contrast to the current language, which requires UDCs to report electricity sales to full-service, or "bundled" customers, with energy service providers reporting the remainder of the sales. Due in part to the changing electricity market, much of the electricity consumption has not been accurately reported to the Commission. We believe this change will improve the accuracy of the information we receive, helping us understand the consumption patterns of both "bundled" customers, who purchase electricity from the UDC, as well as distribution services, and "unbundled" customers, who purchase their electricity from an LSE other than the UDC, while receiving distribution services from the UDC. For purpose of complying with the section, a definition of "revenue" is provided that allows us to distinguish between bundled and unbundled customers. In addition, the proposed language would allow the UDC to select the retail rate class used for reporting, rather than requiring the use of customer groups as defined in the regulation. This allows them to use the retail rate class they use themselves, rather than adopt another classification system solely for complying with the reporting requirements of this section. Subdivision (a)(3) requires the UDCs to provide us with a list of the classes and a description so we can track sales information by rate classes across UDCs. Retail rate classes, as defined in subdivision (a)(2)(C), represent the level of detail that Commission needs in order to prepare electricity price forecasts. (Pub. Resources Code, section 25302.) Subdivision (a)(4) requires quarterly submission of a list of other LSEs for which the non-UDC LSE provides distribution services and the amount of monthly sales. This information is needed so that the Commission can cross check the information we receive from the non-UDC LSEs pursuant to subdivision (b), helping ensure that we have accounted for all the non-UDC LSEs making electricity sales within the state.

Under the proposed language of subdivision (b), LSEs that are not UDCs have a smaller set of reporting requirements. The categories by which these entities report sales and customers are amended so that the sales information is provided for each of the UDC distribution service territories into which the LSE is selling. This allows us to better track both the total volume of non-UDC LSE sales, and the percentage of these sales for all non-UDC LSEs in each UDC distribution service area. This information is necessary for us to understand how the different types of market entities are meeting California's retail electricity needs. In addition, the Commission proposes to allow non-UDC LSEs to

classify their sales by either major customer sector or customer group, different non-UDC LSEs maintain their records differently, and we want to allow them to provide the information as they maintain it themselves.

The Commission also proposes to change the requirements in subdivision (b)(1) (which are currently found in subdivision (c)), so that the information is reported quarterly rather than on an annual basis. Under the existing language, Commission staff can only verify information provided by these entities at the end of the year. Providing the information quarterly will allow the Commission staff to cross check the information provided by LSEs about their sales in a given UDC service area with the UDC information provided pursuant to subdivision (a) more frequently, as well as provide more frequent notification of when new LSEs begin selling electricity in California. Tracking sales by type of entity making the sales provides valuable information about the functioning of the electricity market. This information helps ensure that we have accounted for all the non-UDC LSEs making sales within the state.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission considered several alternatives that would collect this information at greater levels of detail. After discussions at several workshops, and consideration of written comments filed on this topic, the Commission decided that the proposed language represents the best balance of the need for information and the time that it may take filers to provide this information. For example, we considered requiring non-UDC LSEs to meet the same filing requirements as UDCs as is currently the case, but decided that it is burdensome to require that they provide NAICS codes for their customers; this requirement was eliminated from language currently applicable to those entities. Thus, a lower level of disaggregation is identified for the non-UDC LSEs. In addition, the Commission considered continuing with the existing process of UDCs providing NAICS codes to the non-UDC LSEs for those latter entities to in turn submit to us. However, given that this process has failed to provide us with accurate customer classification codes for non-UDC LSE sales, the Commission decided to require UDCs to provide this information directly to us. The status-quo alternative, although less burdensome to UDCs, is not a reasonable one, as it fails to provide us with the information we need. Moreover, since the UDCs possess this information, including it in their submissions should not be difficult.

In sum, there are no reasonable alternatives that would provide us with the information we need to correlate electricity sales and deliveries with types of end uses, types and locations of customers, and the costs of providing electricity and distribution services to end-use customers. The current regulation fails to provide us with all the needed data, and the proposed amendments will address this problem. In addition, the proposed language does not create any adverse impact on small business. For non-UDC LSEs (two of which may meet the statutory definition of small business), the reporting requirements have been changed but not increased. Thus, there are additional initial costs of \$1,200, and a reduction in annual costs of \$600 per year. For UDCs, costs are increased due to the need to collect customer classification information from UDCs; however, UDCs are

excluded from the definition of small business contained in Government Code section 11342.610(a)(2) and (b)(8) by virtue of the fact that they all sell more than 4,500 MWh of electricity each year, or are not independently owned and operated.

Evidence Supporting Adverse Economic Impact Finding on Business

In evaluating the economic impact on business attributable to the amendments to this regulation, the Commission found that 7 businesses would be affected by subdivision (a), 3 of which are also affected by subdivision (a)(4), and 13 by subdivision (b). Initial costs for a typical business for each subdivision were estimated at \$1,800, \$75, and \$600 respectively, with reductions in annual costs of \$600 per year for subdivision (b), increases of \$300 per year for subdivision (a)(4), and no costs for subdivision (a). Total statewide compliance costs were based on an assumption of 10 years and a discount rate of 5.25%, and consist of approximately \$20,000. Total statewide benefits approach \$60,000, due to the reduction in reporting costs. All assumptions are documented in the Form 399. The Commission finds that these costs will not create an adverse economic impact on business because they are relatively small.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted as those sections are not implemented by this regulation. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1307. Gas Utility and Gas Retailer Reports and Customer Classification Reports.

Purpose and Necessity

This regulation governs the reporting of gas sales, customers, and revenue by gas utilities and gas retailers. This section is designed to allow the Commission to collect information that ties together natural gas sales and deliveries by retailer types and locations of customers, and the costs of natural gas to end-use customers. This information contributes to the Commission's forecasts of natural gas demand by allowing us to predict natural gas consumption patterns by customer type and location. The existing language of this regulation imposes reporting requirements about customers and sales on gas retailers and gas utilities. Under the proposed language, reporting

requirements are substantially reduced for both gas utilities and gas retailers. Many of the reporting requirements for gas utilities have been shifted to section 1308(c).

The first change proposed for this section is to narrow the applicability of subdivision (a) to those gas retailers that are not gas utilities, as gas utilities will be reporting this information pursuant to Section 1308(c). The sales information specified in this subdivision is modified to require classification by major sector or customer group rather than by customer classification code. Major customer sector or customer group is specified in lieu of customer classification code because gas utilities will report gas retailer sales by customer classification codes under the proposed language for subdivision 1308(c); therefore we do not need this information from the gas retailers. However, the reporting pursuant to Section 1308 will be aggregated for all gas retailers in a gas utility service area. Because we need to know who the individual gas retailers are selling to, but don't wish to require the same level of detail from the smaller gas retailers as we do from the gas utilities, a lesser degree of disaggregation would be required under this proposal for reporting of sales by gas retailers. Also subdivision (a)(2) is replaced with (a)(1)(C). The proposed (a)(1)(C) eliminates the requirement for gas retailers to report estimates for commodity prices; instead, it requires gas retailers to report revenue information which is similar to revenue information reported to the federal Energy Information Administration. The proposed language changes in section 1307 will allow us to more closely track which companies sell gas to end use customers in California and the location of gas consumption, which will ensure that we have a more accurate picture of gas consumption patterns throughout the state. "BTU" is changed to "Btu" to reflect the standard abbreviation of British thermal unit.

The commission proposes to change the current reporting requirements in subdivision (b)(1) (now subdivision (b)) from annual submissions to quarterly submissions. Under the current regulations, Commission staff can only verify information at the end of the year. Receiving this information quarterly will allow the Commission to not only cross check the information provided by gas retailers about their sales in a given gas utility service area more frequently, but also notify the Commission when new gas retailers begin selling in California. Tracking sales by type of entity provides valuable information about the functioning of the natural gas market. This information helps ensure that we have accounted for all gas retailers making sales within the state. Also in subdivision (b) the reference to LDCs is replaced by the term "gas utility", as we are proposing to delete the definition of LDC and refer solely to gas utilities.

The Commission also proposes to delete existing subdivision (b)(2), which requires LDCs to provide customer classification codes to each gas retailer that sells gas to customers in the UDC's service area. In the proposed language in section 1308(c), gas utilities will report all deliveries by customer classification code. This eliminates the need for gas retailers that sell in a gas utility's service area to use customer classification codes.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives that would provide us with the information we need to correlate gas sales and deliveries with types of end uses, types and locations of customers. The current regulation fails to provide us with all the needed data, and the proposed amendments will address this problem. In addition, the proposed language does not create any adverse impact on small business because the 15 gas retailers and 3 gas utilities affected by the proposed amendments are excluded from the statutory definition of small business. (Govt. Code, section 11342.610, subds. (b)(3) and (b)(9).).

Evidence Supporting Adverse Economic Impact Finding on Business

Although we believe that the changes in the reporting requirements contained in subdivision (a) represent an annual reduction of \$600 in reporting requirements, we have assumed initial costs of \$600 for each gas retailer, associated with changing the templates they use for reporting. The 3 gas utilities affected by subdivision (b) may see increased initial costs of \$75, and ongoing costs of \$300/year associated with increasing reporting pursuant to subdivision (b) from annual reports to quarterly reports. Total statewide costs are estimated to be slightly above \$7,000 over a period of ten years, and statewide benefits will be approximately \$68,000. All assumptions are documented in the Form 399. These costs do not constitute an adverse economic impact on business because they are relatively small.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted as those sections are not implemented by this regulation. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1308. Quarterly Gas Utility and Electric Generator Tolling Agreement Reports.

Purpose and Necessity

This regulation governs the provision of information about natural gas receipts, sendout, and delivery. The information in this section allows the Commission to understand how natural gas is transported and consumed around the state. This in turn allows us to track patterns in consumption that help us develop forecasts of natural gas supply and demand.

The changes to subdivision (a) and (b) of this section are designed to improve clarity and are solely organizational. Subdivisions (c) and (d) are collapsed into a new subdivision (c). Under existing language, gas utilities report annual deliveries pursuant to subdivision (c) and annual revenues pursuant to subdivision (d). The proposed subdivision (c) would combine those requirements into a single section. Also, new subdivision (c) incorporates elements of existing Section 1307(a) – specifically, monthly deliveries and revenues, classified by county and by customer type. Notwithstanding the fact that the reporting requirements are redistributed between the two sections, the overall reporting requirements have decreased, because under the proposed regulations, gas utilities would prepare one detailed quarterly report rather than two. No new information is required.

The Commission also proposes to add a new subdivision (d), which would require LSEs that have entered into tolling agreements to provide information about the natural gas delivered pursuant to that agreement. (As discussed above, under a tolling agreement, the entity that will buy the output of a power plant for resale agrees to procure the fuel source for the electricity production.) Statewide, the amount of natural gas that is consumed pursuant to these agreements is quite large, and the Commission would like to be able to track these transactions so as to better understand patterns in gas consumption associated with electricity production. As natural gas facilities provide approximately 37% of electricity consumed within the state, understanding these trends is important both for accurate assessments of the natural gas markets and the electricity markets. In the past, tolling agreements were not used, and information about the natural gas consumed by powerplants was provided pursuant to Section 1304. Now however, tolling agreements are in common use in California, and in order to collect the same information we used to collect pursuant to Section 1304, we need to collect information from both generators and the LSEs with whom they enter into tolling agreements. Specifically, the Commission proposes to require the submission of monthly information about the volume of gas delivered, the price of the gas, and the location of delivery by generator for each generation facility with a capacity of 50 MW or more. This size threshold was selected because these plants represent the majority of the state’s generation – more than 85%.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission does not believe that any alternatives to the proposed language would create a better balance of reduction in reporting requirements and provision of information necessary to track natural gas deliveries and tolling agreements. With respect to subdivisions (a) – (c), the amendments represent a reduction in reporting requirements, as discussed above. Moreover, gas utilities are exempt from the Government Code definition of small business either as gas brokers, utilities, or gas producers. (Gov. Code, section 11342.610(b)(3), (8), and (9).) The Commission did not find any reasonable alternatives that would both reduce reporting requirements and still provide us with the necessary information. With respect to the LSEs that may need to report pursuant to subdivision (d), the Commission believes that only LSEs with a significant sales volume are likely to engage in tolling agreements, and will therefore be excluded from the definition of small business pursuant to Government Code section 11342.610(b)(8).

Evidence Supporting Adverse Economic Impact Finding on Business

As discussed above, the proposed amendments would not affect reporting requirements under Subdivisions (a) and (b). In addition they would reduce the reporting requirements applicable to gas utilities pursuant to subdivision (c). This is because although subdivision (c) would combine the requirements of existing subdivisions (c) and (d) into a single section, along with elements of existing Section 1307(a), the overall reporting requirements have decreased. The Commission did assume \$900 in initial costs associated with subdivision (c) for each affected business in order to account for changes in the template currently used to report data pursuant to this section. With respect to subdivision (d), as noted above, this is information that used to be reported by generators pursuant to Section 1304. Although this is a new reporting requirement for LSEs that enter into tolling agreements with generators, the Commission does not believe that adding this information to the quarterly reports required pursuant to this section will create any new costs, as it represents a small subcategory of the information being reported pursuant to subdivision (c). Total statewide costs for the amendments to this regulation are estimated at \$3,600, and all assumptions are documented in the Form 399. These costs do not constitute an adverse economic impact on business because they are relatively small.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted as those sections are not implemented by this regulation. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1309: Quarterly Reports: Interstate Pipeline Company Reports

Purpose and Necessity

This regulation requires interstate pipeline companies to provide information to the Commission about natural gas deliveries and receipts. The only change proposed for this regulation is to require that monthly information be provided on a quarterly basis, rather than annual information provided annually. This change is necessary to more closely track seasonal changes in gas usage and supplies. Given both the increase in demand for natural gas and the fact that much of our electricity generation in California depends on

the availability of natural gas, the Commission needs data provided more frequently in order to be able to understand shorter-term usage patterns and their implications for short-term and long-term gas availability, both for end-use consumption and for electricity generation.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission identified no alternatives that would provide the additional level of detail about variations in natural gas consumption patterns that the Commission needs to improve its ability to forecast short-term and long-term gas availability. Moreover, small businesses will not be affected by the amendments because pipeline companies are expressly excluded from the definition of small business in Government Code section 11342.610(b)(9).

Evidence Supporting Adverse Economic Impact Finding on Business

The Commission estimated that each of the 5 companies affected by the changes in this regulation would incur initial costs of \$300, and annual costs of \$600, with a statewide cost of \$24,387 over ten years. All assumptions are documented in the Form 399. These costs do not constitute an adverse economic impact on business because they are relatively small.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted as those sections are not implemented by this regulation. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1310. Natural Gas Processor Reports

Purpose and Necessity

This section identifies the information that the Commission receives for natural gas processors. The Commission uses this information to track the monthly balance between supply (beginning stocks, receipts, and production) and disposition (input shipments, fuel use and losses, and ending stocks) of natural gas liquids. This information is needed as inputs to our modeling of gas supply. The only change to this section is in subdivision

(c), where the Commission proposes to include methane in the list of products that natural gas processor report about each quarter. This amendment is necessary because natural gas processors routinely produce methane, as well as the other gasses listed in that subdivision.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no alternatives that would provide the information about methane production that the Commission has decided is appropriate. Moreover, no small businesses will be affected because all gas processors in California are either gas producers or gas refiners, both of which are excluded from the definition of small business pursuant to subdivision (b)(9) of Government Code section 11342.610.

Evidence Supporting Adverse Economic Impact Finding on Business

There are approximately 100 gas processors in the state, all of whom would be affected by the proposed change. The Commission estimates that there will be initial costs for each business of \$8, and annual ongoing costs of \$30, associated with the changes. Total statewide costs over ten years are estimated at \$23,637, and all assumptions are document in the Form 399. These costs do not constitute an adverse economic impact on business because the costs are relatively small.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The reference to Public Resources Code, sections 25125 and 15126 is proposed to be deleted as those sections are not implemented by this regulation. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, sections 25305, 25308, 25310.2, 25320, 25322, 25324, 25325, and 25401.1 are proposed to be deleted because those statutes have been repealed. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1311. Energy Efficiency Program Data Collection from Local Publicly-owned Utilities.

Purpose and Necessity

This is a new section designed to implement reporting requirements establish by SB 1037 (Stats. 2005, ch. 366, §§ 4 and 6) That bill requires the California Public Utilities Commission, in consultation with the Commission to identify natural gas energy efficiency savings available to gas corporations. (Pub. Utilities Code, section 454.56.) In

addition, the bill requires local publicly-owned electric utilities to report about their investments in energy efficiency and demand reduction programs to the Commission. (Pub. Utilities Code, section 9615.) This regulation implements that legislation, as well as provisions of the Public Resources Code that require the Commission to provide forecasts and assessments of efficiency and conservation efforts. (Pub. Resources Code, section 25301(c).

The Commission worked closely with local publicly-owned utilities to craft the language in this section and believes the draft regulation identifies information that the local publicly-owned electric utilities will have readily available and can easily provide to the Commission. The regulation is divided into two sections; one for electric energy efficiency programs and one for demand reduction programs. For energy efficiency programs, filers will provide a description of each program by category, expenditures by category, broken down into the types of costs – administrative, delivery, incentive and installation costs, and evaluation costs. This breakdown of costs is widely used in the administration of energy efficiency programs, and the local publicly-owned electric utilities have informed us that they plan to use these cost categories as well. Finally, filers must identify expected and actual annual energy and peak demand savings by program category. Energy and peak savings will be the objectives of these programs, and the filers will be able to easily provide these to the Commission. This information will help us prepare the assessments and forecasts required by Public resources Code section 25301.

Subdivision (b) asks for information about demand reduction programs. It is similar to the information required for energy efficiency programs, but somewhat less detailed, as these programs are generally less well-developed than energy efficiency programs. In addition, the Commission proposes to include a requirement that the filer explain how the demand reduction programs were determined to be cost effective. The Commission already has a great deal of familiarity with energy efficiency programs, and will be able to evaluate their cost-effectiveness relatively easily with the information provided in subdivision (a). However, because demand response programs are less well-developed, the cost-effectiveness determination of the utility will be helpful to use in evaluating these programs.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no alternatives that would provide the information about the publicly-owned utility energy efficiency and demand reduction programs that are required by statute. There are no alternatives that would lessen any adverse impact on small businesses because local publicly-owned utilities are neither businesses for purposes of estimating economic impacts, nor small businesses. Costs to publicly-owned utilities are reported as fiscal impacts (*See* fiscal impact portion of Form 399), not as economic impacts to business. Even if publicly-owned utilities were businesses, Government Code, section 11342.610 states that small businesses must be independently owned and operated. Local publicly owned electric utilities are by definition not independently owned and are therefore not small businesses.

Evidence Supporting Adverse Economic Impact Finding

Costs to publicly-owned utilities are reported as fiscal impacts (See fiscal impact portion of Form 399), not as economic impacts to businesses. The Commission estimates of these costs are identified in the Fiscal Impact portion of the Form 399, along with all assumptions used to estimate the fiscal impact.

Reference and Authority Citations

The proposed language for this section also contains authority and reference citations. The authority cited includes two statutes that provide the Commission with general rulemaking authority, and one statute that provides rulemaking authority specifically for the purposes of data collection. The reference citations include statutory provisions that provide a broad mandate to compile and assess energy-related information, as well as statutory provisions related to specific assessments that the Commission must conduct every two years, and a Public Utilities Code provision that directs local publicly-owned electric utilities to report to the Commission about its investment in energy efficiency and demand reduction programs.

Article 2.Forecast and Assessment of Loads and Resources

§ 1340. Scope.

Purpose and Necessity

The Commission proposes to delete this section because the applicability of the reporting requirements identified in this Article is provided in each individual section that imposes such requirements. In addition, this section it references entities no longer defined for purposes of these regulations.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no alternatives that delete the unnecessary language in this section. There are no reasonable alternatives that would lessen any adverse impacts on small business because there are no adverse impacts on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

The proposed deletion of this section will not cause an adverse economic impact on business because deletion will not change the rights of or requirements applicable to any business.

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§ 1341. Rules of Construction and Definitions.

Purpose and Necessity

This regulation contains the definitions that are applicable to the data submittals required under this Article of the Commission’s regulations. The Commission proposes to delete the definitions, as they are either no longer used, or have been incorporated into Section 1302, which is part of Article 1 data collection chapter in the Commission’s regulations. The reference to Section 1302 will remain so that filers know where to find the applicable definitions.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission did not identify any alternatives to this regulation that would provide for a consistent set of definitions to be used throughout both the Article 1 and Article 2 data collection activities. There are no reasonable alternatives to this language that would lessen any adverse impact on small business because there is no adverse impact on small business. The change is organizational, and does not change the rights of or requirements applicable to any small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Deleting definitions that are no longer used and combining the two sets of definitions will not have any adverse economic impact on business because the change is organizational, and does not change the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific reference to subdivisions (a) and (b) of Public Resources Code, section 25216, and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provisions should be cited. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, 25303, and 15324. Also included are statutes concerning the Commission’s responsibility to designate transmission corridors (Sections 25330 et seq. of the Public Resources Code). Finally, Public Utilities Code, sections 9615 and 9620 are proposed to be added as a reference citation because those statutory provisions are implemented in Article 1 and Article 2.

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§ 1342.

General Requirements for Preparation of Planning Reports and Supporting Survey and Load Metering Data Collection Requirements.

Purpose and Necessity

This section establishes general requirements for the data submittals that are required pursuant to this Article. The Commission proposes minor amendments that are non-substantive. First, throughout the document, the reference to individual sections is changed to refer to “reporting requirements identified in this Article.” This will obviate the necessity of changing each such reference in the future if a section is added or deleted. Second, existing subdivision (c), identifying the filing date for biennial reports, is deleted because there are no biennial reports required in this Article. Third, in existing subdivision (e), the reference to the Energy Information and Analysis Division is deleted because the Commission uses a central docket for all data submittals received pursuant to this Article. Finally, in existing subdivision (i), the list of entities that may be required to file reports pursuant to this Article is updated to reflect the entities that are actually subject to such requirements.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission did not identify any alternatives to this regulation that would provide the consistency and clarity improvements that would be achieved with these amendments. There are no reasonable alternatives to this language that would lessen any adverse impact on small business because there is no adverse impact on small business. The changes are grammatical in nature and will not change the rights of or requirements applicable to any small business.

Evidence Supporting Adverse Economic Impact Finding

The grammatical changes proposed for this section will not have any adverse economic impact on business because they are grammatical in nature and will not change the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific reference to subdivisions (a) and (b) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those section are implemented by this regulation, and the entire statutory provisions should be cited. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, 25303, and 15324. Also included are statutes concerning the Commission’s responsibility to designate transmission corridors (Sections 25330 et seq. of the Public Resources Code). Finally, Public Utilities Code, section 9620 is proposed to be added as a reference citation because that statutory provision is implemented in this Article.

§ 1343. Energy End Use Data: Survey Plans, Surveys, and Reports.

Purpose and Necessity

This section outlines the requirements that apply to end-use energy surveys. The Commission uses this information to evaluate energy consumption by end uses. Only non-substantive changes are proposed to this section. First, consistent with the deletion of the definition of the phrase “large size electric utility” in Section 1341, the Commission proposes to use the term UDC in lieu of large size electric utility in this section, while maintaining the same size threshold. Similarly, we have incorporated the size threshold applicable to gas utilities that was found in the repealed definitions in Section 1341. The Commission proposes to use the word “UDC” for “utility” because doing so meets the Commission’s objective of establishing reporting requirements based upon the roles that various entities play in the market. UDC is a more precise term than utility, and it is because of their role in managing the distribution system that UDCs are able to conduct the kind of energy use metering that is called for in this section. As a practical matter, the Commission has never asked for end-use surveys from utilities that are not UDCs meeting the identified threshold, so this change also makes the regulation consistent with Commission practice. No new entities will be filing reports as a result of this change. Finally, we propose to substitute “major industrial customer” for “assembly, process and other industrial customer” in subdivisions (c)(4) and (d)(3). The change is necessary to conform the language in this section to the changes in the definition of “major customer sector” proposed for subdivision (b)(37) of Section 1302, and reflects the fact that we no longer distinguish between the assembly and process industries in our forecast.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission did not identify any alternatives to this regulation that would both provide the consistency improvements that would be achieved with these amendments and meet the Commission’s objective of defining reporting requirements based on market role. There are no reasonable alternatives to the proposed language that would lessen any adverse impacts on small business because no small businesses are affected; gas utilities and UDCs with an annual peak demand of 1,000 MW or more are excluded from the Government Code definition of small business. (Gov. Code, section 11342.610(a)(2), and (b)(3), (8), and (9).)

Evidence Supporting Adverse Economic Impact Finding

The grammatical changes proposed for this section will not have any adverse economic impact on business because they are grammatical in nature and will not change the rights of or requirements applicable to any business.

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Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific reference to

subdivisions (a) and (b) of Public Resources Code, section 25216 is deleted, as other subdivisions within that section are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, section 25216.5 is added as a reference because it is implemented by this regulation. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, and 25303.

§ 1344. Load Metering Reports.

Purpose and Necessity

The Commission asks for load metering in order to carefully and precisely track consumption patterns throughout the state. This information helps us both understand what the current consumption patterns are and forecast future needs. This is particularly critical information in light of the challenges the State faces in meeting demand for certain times of peak consumption.

The Commission is proposing several significant changes to this regulation, which, in total, represent a reduction in reporting requirements. First, subdivision (a), which required submission of hourly historical loads for the previous year on an annual basis, is proposed to apply to LSEs, rather than utilities, of a certain size. The size threshold is unchanged, although it is proposed to be identified in this section rather than in Section 1341. The use of “LSE” in lieu of “utility” is designed to establish reporting requirements based on market function. The word “utility” includes generators as well as others, whereas the Commission is specifically interested in load data that can be provided by entities that sell or provide electricity to meet loads. Thus, the use of the word LSE in this section neither broadens nor narrows the applicability of the section; it is simply a more accurate word to use. In addition, we propose to clarify that we only need information for customers receiving generation services; those LSEs that are also UDCs do not, under this section, need to provide information about their unbundled customers. For non-UDC LSEs, the information should be provided by UDC service area; this will allow us to understand load patterns both by LSE and by UDC service area. In order to accommodate LSE concerns about situations in which actual measurements are infeasible, the Commission proposes to add language allowing the use of statistical estimating techniques in lieu of actual load metering under those circumstances. Finally, we note that the information specified in this subdivision is required to be separated by UDC service territory and to include losses. This information is necessary for the Commission to understand consumption patterns by LSE and by UDC service area. Losses need to be included so that we understand not just the amount consumed by end-users, but the additional amount of electricity that, although lost, must enter into the system in order to meet end-use loads.

New subdivision (b) requires submission of hourly distribution system load hour for the previous year on an annual basis by UDCs. This information was previously required pursuant to subdivision (a); the proposed amendments to that section would require the disaggregation of hourly loads by LSE. Customers in the distribution service area

include retail customers of the UDC and of non-UDC LSEs, whose loads are reported separately pursuant to subdivision (a). Because LSEs with a peak demand of less than 200 MW will not report under subdivision (a), totals from the UDC are needed to understand total distribution area demand patterns. In addition, subdivision (c) requires that loads for the distribution service area be reported with the distribution system losses required to be reported pursuant to subdivision (a) as well as with transmission system losses. Losses are not trivial and it is important for the Commission to understand how much electricity is lost between generation and consumption, as well to understand whether those losses are associated with the distribution system or the transmission system. Understanding where losses occur helps the Commission develop policy recommendations about the location of generation resources and necessary improvements to the distribution and transmission systems.

The modifications to subdivision (c) incorporate the requirements of the existing subsection (c) that hourly loads by customer sector be reported for the previous year, while eliminating the reporting of annual peak load by sector included in the existing (b). Currently, data submission requirements for hourly sector loads are found in existing subdivision (c), which the Commission proposes to delete. The existing language of this section requires data on annual peaks by customer sector, which the Commission proposes to amend to address hourly sector loads. The data submission requirements in this subdivision only apply to UDCs with a peak demand of 1000 MW or more; this size threshold is unchanged, although it has been moved from Section 1341 to this specific subdivision. The change from “utility” to “UDC” as the entity responsible for reporting the information is again due to the fact that utility is broadly defined in the Commission’s regulations, whereas the UDCs are the entities that are actually capable of providing sector hourly loads. Additional restructuring of the sentences in new subdivisions (c) and (c)(1) are designed to improve the clarity of the language, but do not impose any substantives changes. Several of the existing sectors identified in subdivisions (c)(1)(A) – (H) are collapsed, which will reduce the amount of required reporting. Losses are also required to be identified. Because the sector load shapes are based on metered load with no losses included, estimates of hourly losses are needed to provide a measure of total system load.

In subdivision (c)(2), a long-standing typographical error is proposed to be corrected by substituting “±” for “+”. The accuracy requirement applicable to monthly sector load coincident with system peak is the same requirement as in the existing subsection (c). Finally, an electronic format is required for the data submission because that is the way the data is kept and is most manageable for both filers and the Commission.

As discussed above, existing subdivision (c) is proposed to be deleted, as a result of moving data submission requirements concerning sector peaks into new subdivision (c). Subdivision (d) consists of entirely new language that will require the submission of hourly distribution load data for each month on a monthly basis. The requirements are similar to those proposed to be located in subdivision (b); however, the information is to be provided monthly rather than on an annual basis. The requirements of this section only apply to UDCs with a system peak of 2,000 MW or more, which represent the five

largest UDCs. The Commission needs this information from these entities in order to be able to understand whether there are significant short-term changes in loads that could affect the ability of the state's electrical system to meet demand or our forecasts of future demand. Finally, in this subdivision, we do not propose to require that distribution and transmission losses be separately reported; because our focus is on short-term patterns of large UDC demand, we do not need that level of detail.

Finally, the Commission proposes to add new subdivision (e), which would require electric transmission system owners to provide hourly load information for the previous year by subarea. These requirements would only apply to those transmission system owners that have experienced a peak electricity demand of 2,000 MW or more during the previous calendar year. The same requirements that are applicable to the load metering required pursuant to subdivision (a) and (b) would be required here as well. This information is necessary because it identifies loads by subareas, which are the basis by which transmission system owners address deliverability and conduct expansion studies. This information will allow us to assess issues associated with deliverability of electricity, included any needed transmission system expansion. Because different transmission system owners use different definitions of "subarea" in addressing deliverability and expansion, the Commission proposes a definition that allows each such owner to use the definition it uses for purposes of filings with its control area operator, or for those owners that are their own control area operator, their governing body.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission considered two alternatives to the proposed amendments to this section. First, the Commission considered a lower size threshold for LSE customer load information in subdivision (a). However, in response to concerns expressed by some of those LSEs in workshops, the Commission decided to keep a 200 MW peak load threshold. The Commission also considered requiring this information from UDCs only, and not including non-UDC LSEs in the reporting requirements. Although this option would have eliminated reporting requirements for those entities, the Commission rejected the option because it would not provide the non-UDC LSE- specific information we need to track load patterns. Non-UDC LSEs have a different customer mix and therefore different hourly load patterns than the customers of UDCs. Evaluating the resource adequacy of individual LSEs requires knowledge of the current load characteristics.

None of the entities affected by the amendments to this regulation -- UDCs, LSEs with a peak demand of 200 megawatts or more, and transmission system owners -- are small businesses under the definition found in Government Code, section 11432.610. (See Gov. Code, section 11342.610(a)(2) and (b)(8).)

Evidence Supporting Adverse Economic Impact Finding on Business

There are 5 businesses that are affected by proposed amendments to subdivision (a) and 3 affected by proposed amendments to subdivisions (c) – (e). With respect to subdivision (a), the 5 LSEs that are affected are subject to the same reporting requirements by virtue of the CPUC's Resource Adequacy process. (See CPUC Decisions 04-10-035, 05-10-

042, and 06-07-031.) These entities will not incur any additional costs to provide the same information to the Commission. The 3 UDCs affected by subdivisions (c) – (e)⁵ will be required to conduct additional data processing. The Commission estimates that there will be initial costs of about \$3,000 per business and annual costs of approximately \$1,200 per business for the changes to subdivision (e). Changes to subdivisions (c) and (d) will require no initial costs, but subdivision (d) will require annual costs of \$5,400, whereas changes to subdivision (c) will create annual savings of approximately \$900. In sum, the changes to this section will have lifetime costs of approximately \$170,000, and lifetime savings of \$20, 598. The Commission considers this cost to be relatively small and does not believe that it constitutes an adverse economic impact.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific references to subdivisions (a) and (b) of Public Resources Code, section 25216 are deleted, as other subdivisions within that section are implemented by this regulation, and the entire statutory provision should be cited. Public Resources Code, section 25216.5 is added as a reference because it is implemented by this regulation. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, and 25303.

§ 1345. Demand Forecasts.

Purpose and Necessity

This section requires various entities to submit forecasts of projected demand. The Commission compares this information to the forecasts it develops using end-use forecasting techniques in order to develop long-term forecasts of the need for electricity within the State. Although the proposed changes result in a much longer regulation, there is actually little substantive difference between the existing and proposed language. Most of the changes are due to the fact that the Commission is proposing to establish a subdivision identifying the appropriate reporting requirements for each of the different entities subject to reporting pursuant to this section. In addition, the time of the forecast period is halved, significantly reducing the burden associated with preparing the forecasts.

First, the Commission proposes to substitute “LSE” for “electric utility.” As stated previously, “electric utility” is defined very broadly, and the Commission is only seeking demand forecast information from those entities in the market that actually serve retail load. Second, the length of the forecast period is changed from 20 year to 10 years, due to the fact that many LSEs that participated in the development of these amendments

⁵ Only publicly-owned utilities are affected by proposed changes to subdivision (b), and costs to publicly-owned utilities are reported as fiscal impacts (see fiscal impact portion of Form 399), not as economic impacts to businesses.

stated that 20-year forecasts are very speculative. As a result, the Commission proposes to shorten the forecast period.

New subdivision (a) establishes the requirements for LSEs that are UDCs. Much of the language in this subdivision is found in existing subdivisions (a) – (g). One difference is that the UDCs are required to provide their assumptions about changes in service area or load migration. This information is necessary for the Commission to meet the mandate imposed by Public Resources Code, section 25302.5. The language regarding energy and peak forecasts by major customer sector for both residential and non-residential customers is collapsed into a single requirement, with the requirement for use of end-use categories and marginal and average unit energy consumptions and saturation rates deleted. This is a reduction in reporting requirements. An addition to these requirements is a forecast of hourly loads for specific years that are identified in the Forms and Instructions. Under the existing regulations governing the Commission’s data collection process, specific details of the demand forecast are to be provided in Forms and Instructions adopted by the full Commission. The regulations identify the scope of potential filing requirements, which are then narrowed in the Forms and Instructions – in this case, the Commission will select the years for which hourly load forecasts are required, based on the information before it at the time about which years are most appropriate. Hourly loads help us closely assess consumption patterns in a given year of concern and help us develop more detailed forecasts on a as-needed basis.

Similarly, in subdivision (a)(6), UDCs that are also transmission system owners will be required to provide forecasts of load for subareas for specific years identified by the Commission in the Forms and Instructions. Again, in the existing language, the potential scope of the filing requirement is identified in the regulations, and the scope is narrowed in the Forms and Instructions, based on information before the Commission at the time they are adopted. Using this same process in the proposed regulation will allow us to focus our analytical efforts on specific years of concern, and more closely assess issues associated with the demand forecast. Hourly loads for specific years and transmission subarea loads are needed to develop more detailed forecasts, both by hour and geographically, to support transmission planning and resource assessment. To support analysis of “load pockets” - areas where the transmission system is constrained and it may be difficult to deliver electricity to load – the Commission must develop forecasts for smaller geographic areas. In addition, historic and forecasted loads by subarea or climate zone allow the Commission to analyze the relationship between peak loads and temperature. The Commission will use these data to develop climate-zone level forecasts of hourly loads for use in transmission system planning and evaluation of resource needs both system-wide and in constrained areas.

Proposed subdivision (b) establishes the reporting requirements for LSEs that are not UDCs. They are identical to those applicable to UDCs, except that a map of the service area is not required (as non-UDC LSEs do not have service areas), and there are no requirements for plausibility, sensitivity and alternative economic scenario analysis, conservation information, and electric transmission system information. The Commission decided that the plausibility, sensitivity, and alternative economic scenario

analysis was too burdensome for non-UDC LSEs, and that conservation and electric transmission system information is not likely to be applicable, as non-UDC LSEs do not own transmission systems or conduct conservation programs. The elimination of the first two items is a reduction from current reporting requirements. Load migration assumptions and hourly loads for years specified in the Forms and Instructions are required for the same reasons this information is required of UDCs. Finally, non-UDC LSEs will be allowed to present their information by customer group, rather than customer sector. Customer groups are more aggregated than customer sectors, so this is a reduction in the filing requirements for these entities.

New subdivision (c) contains the informational requirements applicable to gas utility demand forecasts. Those requirements are similar to those for UDCs. There are only minor changes to the existing requirements for gas utility demand forecasts. These changes include a requirement that gas utilities provide their assumptions about load migration and service area changes; the rationale for this change is identical to that supporting inclusion of the same language for UDC electricity demand forecasts. In addition, the forecast period is shortened from twenty years to ten years, a reduction in reporting requirements. Third, the exact timeframe for the energy and peak demand forecasts is identified, consisting of annual and monthly energy demand and annual peak demand. This change is necessary because of increasing concerns about the ability of the system to meet winter peak gas demand; with this information, the Commission can assess seasonal gas demand. Finally, with respect to major customer sector forecasts, specific information about the presentation of residential and non-residential forecasts is deleted, as the Commission has decided to provide flexibility to the gas utilities in presenting these forecasts; the level of detail currently specified is no longer required, representing a reduction in reporting requirements.

Amendments to Section 1350 expand an exemption to these filing requirements for smaller sized LSEs and gas utilities, further reducing the reporting requirements associated with this regulation.

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Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The only alternative considered by the Commission was retaining the twenty-year forecast period. The Commission rejected this option because it agrees with LSEs that commented on the draft proposal that under current market conditions, a twenty-year forecast is highly speculative. There are no reasonable alternatives to the amendments proposed for this section that would lessen any adverse impact on small business because 1) the revisions constitute a reduction in existing reporting requirements, and 2) no small business is subject to the requirements of this provision. As discussed above, UDCs are not small business (Gov. Code, section 11342.610(a)(1) and (b)(8). Non-UDC LSEs that are subject to this section are either not small businesses, or for the two that are, may take

advantage of an exemption pursuant to the proposed amendments to Section 1350.⁶ And gas utilities are exempt as well as utilities (subdivision (b)(8)), gas brokers (subdivision (b)(3)), and gas producers (subdivision (b)(9)).

Evidence Supporting Adverse Economic Impact Finding on Business

Many of the amendments to this section are either organizational or represent a reduction in reporting requirements. Three requirements for UDCs are new - assumptions about load migration and changes in service areas, hourly loads for specific years, and transmission subarea loads. However, these are more than outweighed by the reduction in the forecast period and in the amount of information required at the customer sector level. For non-UDC LSEs, the economic effect of additional data requirements is approximately equal to the reduction in the forecast period; the Commission estimates that there will be no economic impact resulting from the changes to subdivision (b). For gas utilities, there are both reductions and increases in reporting requirements; the net effect is likely to be annual costs of \$150, for a total statewide cost over ten years of \$3,433. Thus, increased total statewide costs of \$3,433 associated with subdivision (c) are outweighed by the total statewide savings attributable to the other two subdivisions of almost \$25,000. These estimates do not take into account the savings that will be created by expansion of the exemption available for smaller LSEs and gas utilities pursuant to Section 1350. All cost assumptions are documented in the Form 399. The costs do not represent a significant adverse impact on business because they are relatively small.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provision should be cited. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1346. Electricity Resource Adequacy.

Purpose and Necessity

⁶ According to Government Code, section 11432.610, a utility, water company, or power transmission company that generates or transmits 4,500 MWh annually or more is not a small business. LSEs with a peak demand of 200 MW or less, which would be exempt under Section 1350, are involved in the transmission of much more than 4,500 MWh annually. For example, Redding Electric Utility had a peak demand in 2005 of 245 MW, and sold 769,300 MWh. Redding Electric Utility is actually a publicly-owned utility and not a small business, but the figures are illustrative of how low sales must be for an LSE to meet the definition of a small business. The Commission estimates that only two LSEs that are subject to this regulation may meet that definition.

This is an entirely new section that is designed to allow the Commission to meet its responsibilities to assess resource adequacy. The Commission proposes to implement reporting requirements for LSEs under the authority of the California Public Utilities Commission (CPUC) for purposes of resource adequacy, as well as for local publicly-owned electric utilities (POUs) and other LSEs. There are several statutory mandates supporting these informational requirements. Public Utilities Code, section 9620 directs the Commission to evaluate the progress made by POUs in meeting the resource adequacy requirements of that statutory provision. In addition, Public Resources Code, sections 25301(a), 25302(c), and 15303(a)(3) require the Commission to assess demand forecasts and resource plans, evaluate the need for necessary actions, including new resources and efficiency, and evaluate the availability and reliability of electricity resources to meet forecasted demand. It is common knowledge that the state has faced significant challenges in recent years in meeting demand. As a result, we propose to collect information from *all* LSEs within the state on resource adequacy issues. The information that we collect pursuant to this section will allow the Commission to develop policy recommendations to alleviate these shortfalls that take into consideration information from all LSEs within the state. In addition, we will continue to work cooperatively with the CPUC in its efforts to ensure resource adequacy for those LSEs under its jurisdiction.

The first section of the regulation describes the general requirements; the specific requirements are detailed in (a) and (b) below. Basically, in order to meet statutory mandates, the Commission needs a quantitative description of short-term load forecasts and resource plans, along with a discussion of the specific procurement activities that will be undertaken to meet load. This section generally identifies those needs.

Subdivision (a) describes the requirements that are applicable to those LSEs that are under the jurisdiction of the CPUC for purposes of resource adequacy pursuant to Public Utilities Code, section 380. The Commission proposes to adopt a fairly minimal set of reporting requirements for these entities, as the CPUC has already conducted a public process and formally adopted resource adequacy rules. The time period to which the reporting requirement is applicable is one year; this is the time period for which the CPUC assesses resource adequacy. (CPUC Decision 04-10-035.) The information that is required consists of monthly energy and peak load forecasts, an enumeration of all of the specific resources used to satisfy load, identification of any required planning reserve margins, and specialized reporting of particular resources that satisfy local requirements that stem from deliverability constraints requiring that resources be located in particular load pockets. The base forecast and customer counts will allow us to understand the basis of the LSE's projections of need. Savings and adjustment information lets us know what type of changes can be expected as a result of certain type of demand-side management and distributed generation programs. These types of programs are specifically called for by the CPUC. This in turn lets us know how well these CPUC programs are working, as well as identifies specific LSEs or areas of the state that could benefit from more aggressive implementation of these types of programs. All of the information in subdivision (a)(1) is required to be segregated by UDC service area

because the non-UDC LSEs may have load in multiple service areas and it is important for resource adequacy purposes to understand how much load is in each service area.

In addition, subdivision (a) would require the LSE to provide information about the resources available to it to meet load. In order to assess the sufficiency of those resources, we will ask about the location of the resources and scheduling points for any imports into the control area where load is being served. This information is critical to understanding where the electricity comes from that is used to meet load and how it enters the control area. Given that the transmission system suffers from constraints, it lets us assess the ability of the LSE to serve load with the resources it identifies. In addition, we identify that we need to know whether the capacity secured under contract is unit contingent or not in order to determine whether there is a specific unit that will provide the unit or a portfolio of units; either scenario may raise deliverability issues that must be addressed in a resource adequacy analysis. Information about demand response programs and whether any resource is needed to satisfy local capacity requirements imposed by the CPUC, or various tariffs is also needed to address deliverability issues.

Subdivision (a) also identifies information about deliverability and dispatchability restrictions; these restrictions can prevent power that would otherwise be available to serve load from reaching the area where it is needed. This information will allow us to assess whether the loads identified by the LSE can actually be met with the identified resources. Finally, subdivision (a)(4) requests historical information about what resources were utilized to meet monthly peak demand and planning obligations during the past year. This information will be used to compare the forecast of loads and resources provided pursuant to the rest of the subdivision with historical data for the previous year, and helps us assess how constraints and restrictions have affected the movement of electricity from generation to load.

Subdivision (b) identifies the resource adequacy requirements applicable to non-CPUC jurisdictional LSEs. The information in subdivision (b)(1) is similar to that in subdivision (a)(1), although the Commission proposes to ask for more detail about the specific criteria used, as these criteria have not been developed as part of a public process as have those adopted by the CPUC. As a result, some language is different than that proposed to be adopted under subdivision (a). For example, the language in subdivision (b)(1)(C) is more general than the language in (a)(1)(C), which uses language describing CPUC-prescribed programs. Other LSEs, on the other hand, develop their own programs, so an informational requirement identical to that in (a)(1)(C) is inappropriate. For subdivision (b)(2), the requirements are the same, except that no information is required concerning local capacity requirements from LSEs not under the jurisdiction of the CPUC, those requirements do not exist for non-CPUC jurisdictional LSEs. Subdivision (b)(3) is identical to subdivision (a)(4), and is needed in order to compare the forecast of loads and resources provided pursuant to the rest of the subdivision with actual data; this provides valuable information about how constraints and restrictions have affected the movement of electricity from generation to load.

With respect to subdivision (b)(4), the Commission is requiring LSEs not under the jurisdiction of the California Public Utilities Commission to provide descriptions of requirements imposed on such LSEs by control area operator or planning entities in order to ensure resource adequacy and reliability. This information lets us know what types of requirements are in place, and helps us assess how LSEs plan to meet those requirements. Each of the items in subdivision (b)(4)(A) – (E) could have a significant effect on an LSE's ability to serve load, and the Commission needs a discussion of those items in order to assess resource adequacy issues associated with the load served by these LSEs.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

This regulation was developed with a great deal of input from the LSEs that will be subject to the filing requirements it contains. During the development of the draft proposal, a number of ideas were discussed by the Commission and by the LSEs. However, the basic requirements of the proposal have remained constant, and the only changes have been to segregate the requirements for the CPUC jurisdictional LSEs and the non-CPUC jurisdictional LSEs, and to add more detail. There are 15 LSEs that are subject to CPUC jurisdiction for purposes of resources adequacy; they are affected by the requirements of subdivision (a). Two of those are potentially small businesses. As these reporting requirements mirror the CPUC's reporting requirements, the only costs to those businesses are costs associated with copying filings to the CPUC.⁷ These costs -- estimated at \$150/year -- are not large enough to cause an adverse impact to the two small businesses affected by the proposed regulation. Thus, there are no reasonable alternatives to the amendments proposed for this section that would lessen any adverse impact on small business because there will be no adverse impact on small business caused by this regulation. With respect to the non-CPUC jurisdictional LSEs subject to the provisions of subdivision (b) of the proposed regulation, they are all publicly-owned utilities and costs that they incur are reported as fiscal impacts (*See* fiscal impact portion of Form 399) and not as economic impacts to business. Even if publicly-owned utilities were businesses, Government Code, section 11342.610 states that small businesses must be independently owned and operated. Local publicly owned electric utilities are by definition not independently owned and are therefore not small businesses.

Evidence Supporting Adverse Economic Impact Finding on Business

As noted above, the only costs to business associated with the requirements of this section are copying costs for filings made to the CPUC. Typical annual costs for each business are estimated at \$150/year for each of the 15 businesses for a statewide total cost over ten years of \$17,165. All assumptions are documented in the Form 399. These costs do not represent an adverse economic impact on business because they are relatively small.

Reference and Authority Citations

⁷ The Commission is not incorporating the CPUC requirements by reference because they can change as the result of a CPUC Order, and the Commission believes that the requirements identified by the CPUC at this time are appropriate.

The proposed language for this section also contains authority and reference citations. The authority cited includes two statutes that provide the Commission with general rulemaking authority, and one statute that provides rulemaking authority specifically for the purposes of data collection. The reference citations include statutory provisions that provide a broad mandate to compile and assess energy-related information, as well as statutory provisions related to specific assessments that the Commission must conduct every two years, and a Public Utilities Code provision that directs the Commission report to the Legislature, regarding the progress made by each local publicly owned electric utility serving end-use customers in meeting statutory requirements related to resource adequacy.

§ 1347. Resource Plans.

Purpose and Necessity

This section allows the Commission to collect information about how entities that provide electricity to customers in California plan to meet customers' needs. With one exception, the only changes to this section are either clarifications or reductions in existing reporting requirements. First, the existing regulation is applicable to "utilities", whereas the amended regulation would be applicable only to LSEs. As described previously, the term "electric utility" is very broad, but the Commission is only interested in obtaining resource plan information from those entities that provided electricity to end-users. Second, the length of the forecast period is reduced from 20 years to 10 years. In addition, the list of elements that must be included in the resource plan is reduced from six to three; the information identified in existing subdivisions (c) – (e) is proposed to be eliminated. One clarification is that the resource plan must be consistent with the demand forecast provided pursuant to Section 1345. Because the Commission is responsible for assessing the need for resource additions (Public Resources Code, section 25302(c), the assumptions underlying the amount of demand and the availability of projected resources need to be consistent. The Commission proposes to collect relevant transmission system information identified in existing subdivision (c) in new Section 1349, and the information identified in subdivisions (d) and (e) are no longer used in our assessment efforts. The only new information provided is identified in new subdivision (a)(3) and (b)(3), consisting of a description of the criteria used to develop resource plans, alternative resource plans, and resource mix preferences. This information is needed so that the Commission can assess means by which compliance with existing procurement policies is being undertaken, and whether changes or additions to existing policies should be considered.

In this section, the Commission proposes to separately identify resource plan requirements for LSEs that are UDCs and LSEs that are not UDCs. This is consistent with our objective of establishing reporting requirements by market function. As discussed above, non-UDC LSEs function differently in the market than UDCs, even when both are providing electricity for end-use consumption. UDCs have captive customers that cannot opt for a different electricity provider, and have guaranteed cost recovery. However, with resource plan forecasts, the proposed requirements for the two groups are identical. Thus, they could theoretically be combined. Nonetheless, the

Commission prefers to have two separate sections because we believe it is important to maintain a distinction between the two groups throughout the regulations.

Amendments to Section 1350 expand an exemption to these filing requirements for smaller sized LSEs, further reducing the reporting requirements associated with this regulation.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The only alternatives considered by the Commission were 1) combining the reporting requirements for LSEs that are UDCs and non-UDC LSEs into a single section; and 2) maintaining the 20-year forecast. As discussed previously, both alternatives were rejected; neither would lessen any adverse impacts on small businesses, as the first alternative would only create organizational differences and would have no effect on reporting requirements. The second alternative would have maintained, rather than reduced, reporting requirements. There are no reasonable alternatives to the amendments that would lessen any adverse impact on small business because 1) the changes represent a reduction in reporting requirements, and 2) the only two small business subject to reporting requirements pursuant to this regulation -- non-UDC LSEs involved in generating or transmitting 4,500 MWh or less annually -- would be exempt from the reporting requirements of this section, pursuant to the proposed language of Section 1350.

Evidence Supporting Adverse Economic Impact Finding on Business

The Commission finds that the proposed amendments to this regulation would not have any adverse impact on business because they reduce reporting requirements for both UDCs, and non-UDC LSEs. The only new requirement -- a description of the criteria used to develop resource plans, alternative resource plans, and resource mix preferences -- will require minimal effort to comply with and is outweighed by the reductions found in the other amendments to this section. In fact, the Commission has identified statewide savings of \$57,216 for UDC LSEs and \$57, 216 for non-UDC LSEs associated with the reduction in the forecast period from 20 years to 10 years. In addition, cost savings attributable to the reduction in reporting requirements regarding transmission information specifically applicable to UDCs are \$17,165 over the ten-year life of the regulation, with annual savings averaging \$750. Finally, the elimination of electric generating facility owners as entities responsible for reporting forecast information to the Commission results in estimated savings of \$1,500 per year and total statewide benefits of \$1,315,975. These savings do not take into account the additional savings that will be created by expansion of the exemption available for smaller LSEs and gas utilities pursuant to Section 1350.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific references to

subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provisions should be cited. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1348. Pricing and Financial Information

Purpose and Necessity

This section allows the Commission to collect information about forecasted retail electricity prices. The proposed changes to the regulation consist of changing electric utility to LSE, separating reporting requirements by type of business entity (LSEs that are UDCs, non-UDC LSEs, gas utilities), adding interstate pipeline companies to the list of those entities that must report information pursuant to this section, limiting the forecast period to ten years, and eliminating the requirement for financial variables for non-UDC LSEs.

As discussed previously, “electric utility” is defined broadly both in statute and in the Commission’s regulations, and the Commission is only seeking pricing and financial information from a subset of utilities – those entities that provide electricity for end use consumption. Therefore, the word LSE is used in lieu of “electric utility.” Interstate pipeline companies are proposed to be added because their operations are critical to the natural gas market trends in the state; their financial and pricing information will help us determine the natural gas flows at various border crossing points in the state, and the potential impact on near-term prices charged to the electricity generation customers and to other markets. Finally, the requirement that the electricity price forecast be accompanied by a forecast of financial variables is amendment to apply only to LSEs that are UDCs because financial variables, such as rate of return, depreciation, taxes and bond financing are necessary to estimate some components of UDC rates. Different variables may affect different UDCs, but there are no financial variables affecting the non-UDC LSE forecasts of retail prices, which consist solely of estimates of the costs of purchasing and selling energy plus a profit.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The only alternative considered by the Commission was maintaining the 20-year forecast. As discussed previously with respect to Sections 1345 and 1347, that alternative was rejected; its selection would not lessen any adverse impacts on small businesses as it would maintain the status quo while the selected option reduces reporting requirements. Moreover, as discussed previously, UDCs are not small business (Gov. Code, section 11342.610(a)(1) and (b)(8). Non-UDC LSEs that are subject to this section are either not small businesses, or if they are, are eligible for an exemption pursuant to the proposed amendments to Section 1350. Finally, gas utilities and pipeline companies are expressly

excluded from the definition of small business in Government Code section 11342.610(b)(9).

Evidence Supporting Adverse Economic Impact Finding on Business

The Commission has initially determined that there will be no adverse economic impact on business resulting from the proposed modifications to this section. In fact, all modifications to this section represent a reduction in reporting requirements. Non-UDC LSEs have a shorter forecast period and will no longer be required to financial variables used to derive the forecast. This will result in a savings of approximately \$900 annually for each such LSE. For UDC LSEs, the savings result solely from the shortening of the forecast period. The Commission estimates that those savings will constitute about \$300 per year for each affected business. For gas pipeline companies and gas utilities, there are similar savings associated with the reduction in the forecast period. Although one amendment would add gas pipeline companies as subject to the reporting requirement, this is not a substantive change, as gas pipeline companies are included in the definition of gas utilities in Public Resources Code, section 25122. This amendment stems from the Commission's goal of defining reporting requirements by market function, but does not create any economic impact. Total statewide savings attributable to the proposed changes over ten years are approximately \$91,000. This savings estimate does not take into account the savings that will be created by expansion of the exemption available for smaller LSEs and gas utilities pursuant to Section 1350.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific references to subdivision (a) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provisions should be cited. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1349. Electric Transmission System Plan and Corridor Information.

Purpose and Necessity.

This is an entirely new section, designed to collect information needed for the Commission to evaluate transmission system needs. The Commission is required to conduct such an assessment pursuant to Public Resources Code, sections 25301(a) and 25324. The regulation consists of two subdivisions providing information requirements and one providing definitions that are unique to this section.

Subdivision (a) identifies the information that transmission system owners must provide regarding its existing system and expansion plan. Expansion plans are typically produced

annually by the investor-owned utilities (these are the privately owned UDCs that are regulated by the CPUC; they also own and operate transmission systems) and on a more sporadic basis by other transmission owners in the state. Transmission expansion plans are typically incorporated, along with planned resource acquisition and demand-side management programs, into the overall utility plans for serving future electricity loads. They usually identify the transmission projects required to reliably serve loads.

In order to prepare the strategic transmission plan identified in Public Resources Code, section 25324, the Commission needs information about transfer capabilities – the ability of a transmission line or path to accommodate the movement of electricity into and out of a service area.⁸ This provides valuable information about the ability of the state’s electric grid to move power from where it is generated to where it is needed. Some electricity shortages are a result of insufficient transfer capability, not insufficient generation, and it is important for the Commission to know where those insufficiencies occur. This information is identified in subdivision (a)(1). In addition, the Commission needs information about planned upgrades to the transmission system, identified in subdivision (a)(1)(A), so that it can understand how transmission system owners are planning to accommodate future load growth. The Commission also proposes to ask, in subdivision (a)(2), for information about constraints within a service area; along with limitations on transfer capability. These types of constraints can interfere with the ability of a UDC to provide electricity to load. Similarly, the Commission needs information about planned upgrades within the transmission system. All this information will be used to meet the statutory mandate to prepare a strategic plan that identifies actions required to ensure reliability, relieve congestion, and meet future growth in load and generation. Without this information, we will be unable to identify where constraints are likely to occur, the cause of the constraints, and what action is needed to meet the statutory objectives.

In subdivision (b), the Commission proposes to ask for transmission corridor information. Recently enacted SB 1059 (Stats. 2006, ch. 638) defines a “transmission corridor zone” as the geographic area necessary to accommodate the construction and operation of one or more high voltage transmission lines, those with a capacity of at least 200 kilovolts. The bill allows the Commission to designate a transmission corridor zone, either on its own motion or by application of a person who plans to build a high-voltage electric transmission line within the state. The information identified in this subdivision will provide for a basic understanding of how such a transmission corridor zone could be coordinated with the plans and needs of the state’s electric transmission system owners.

Finally, subdivision (c) provides the definitions that are unique to this section. The definition of “transmission constraint” is identical to the definition used by the North American Reliability Council (NERC), an organization that ensures the reliability of the bulk electric system in North America. (The Western Electricity Coordinating Council,

⁸ Typically, when there is just one line, the transfer capability reflects that one line. Where there is a path consisting of multiple lines, the transfer capability based on the path, not the sum of the capability of each line. For example, where there are three lines in a path, the transfer capability will likely reflect the transfer capability of two of the lines, but not the third. This is due to constraints that are imposed on the way in which the line can be used in order to ensure reliable operation of the entire electrical grid.

which is the Reliability Council for the Western Interconnection, which includes California, is a member of NERC.) (Glossary of Terms Used in Reliability Standards, NERC, 2005.) Similarly, the definition of “transfer capability” is also a NERC definition. (*Ibid.*) The website where the NERC glossary can be found is: http://www.nwpp.org/pdf/Glossary_Clean_11-3-04.pdf The definition of “transmission corridor” is the same as that used in recently-enacted SB 1059. Finally, the definition of “transmission path” reflects the fact that transmission paths consist of multiple lines that may limit the transfer of power from one area or another. Also it is a commonly used term, we were unable to find any definition adopted by any transmission owner or control owner. We believe our definition reflects the common usage of the term.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission found no reasonable alternatives to this new section that would provide the information needed in order to fulfill our statutory mandate. Moreover, there are no transmission system owners in the state that transmit less than 4,500 MWh annually, thereby excluding any affected entity from the definition of small business found in Government Code, section 11342.610. As no small businesses are subject to the provisions of this regulation, its adoption will not cause any adverse impacts on business.

Evidence Supporting Adverse Economic Impact Finding on Business

There are three transmission owners that will be subject to reporting requirements identified in this section. The Commission estimates that each set of requirements -- those contained in subdivision (a) and those contained in subdivision (b) -- will result in initial costs to those three businesses of \$3,000 and annual costs of \$750 for a statewide cost over ten years of approximately \$43,608. All assumptions are documented in the Form 399. This cost does not represent a significant adverse impact on business because it is relatively small.

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Reference and Authority Citations

The proposed language for this section also contains authority and reference citations. The authority cited includes two statutes that provide the Commission with general rulemaking authority, and one statute that provides rulemaking authority specifically for the purposes of data collection. The reference citations include statutory provisions that provide a broad mandate to compile and assess energy-related information, as well as statutory provisions related to specific assessments that the Commission must conduct every two years, a specific Public Resources Code provision that directs the Commission to adopt a strategic plan for the state’s electric transmission grid, and statutes concerning the Commission’s responsibility to designate transmission corridors.

§ 1350. Exemptions.

Purpose and Necessity

This section provides exemption for smaller sized gas utilities and electric utilities. The Commission proposes to amend this section to reference small LSEs rather than small

electric utilities. As discussed previously, “utility” is broadly defined, and the Commission wishes to extend the exemption only to those entities that are subject to filing requirements as a result of their market function of providing electricity and gas for end-use consumption. As the definition of small gas and electric utility is proposed to be deleted in Section 1341, the definitions are added to this section, but are unchanged.

In addition, the Commission proposes to change the scope of the exemption. Currently, the regulation allows the Commission to establish abbreviated reporting requirements for those filers eligible for an exemption; under the proposed language, the exemption extends to *all* information required pursuant to Sections 1345, 1347, and 1348, provided the information identified in section 1346 is submitted. The change in scope was selected because under the proposed language of Section 1346, we will be obtaining near-term resource plan information as well as historic data that, although more limited than the data we would otherwise obtain under these sections, is nonetheless sufficient for us to evaluate the demand forecasts and resource plans of entities of this smaller size. In addition, a filer seeking an exemption under the existing language must notify the Commission in advance of the filing deadline; under the proposed language the exemption is automatic.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission found no reasonable alternatives that would lessen any impact on business, including any small business because the proposed amendments reduce reporting requirements. Those small businesses that are subject to the filing requirements of this Article (the Commission estimates that there are two such businesses, both LSEs), will benefit from the expansion of the exemption. It is true that the exemption is not available for Section 1346, but Section 1346 is a new section, not an existing section; thus, the changes proposed for this section represent a reduction in existing reporting requirements. The impact of Section 1346 on small business is identified in the discussion of that section, above.

Evidence Supporting Adverse Economic Impact Finding on Business

The Commission finds that the proposed amendments to this regulation would not have any adverse impact on business because they reduce reporting requirements. Filers are now eligible for a complete exemption from existing reporting requirements, and need not comply with abbreviated reporting requirements, nor do they need to provide a notification to the Commission. The economic effect of this expansion of the exemption on businesses is identified in the discussion of the individual sections to which the exemption applies – Sections 1345, 1347, and 1348. It is true that the exemption is not available for Section 1346, but Section 1346 is a new section, not an existing section; thus, the changes proposed for this section represent a reduction in existing reporting requirements. The impact of Section 1346 on business is identified in the discussion of that section, above.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific references to subdivisions (a) and (b) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provisions should be cited. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, and 25303.

§ 1351. Requests for Information.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Public Resources Code, section 25320 is proposed to be added to the authority citation because it is a new statute authorizing the adoption of regulations for data collection purposes. The specific references to subdivisions (a) and (b) of Public Resources Code, section 25216 and subdivision (d) of Public Resources Code, section 25216.5 are deleted, as other subdivisions within those sections are implemented by this regulation, and the entire statutory provisions should be cited. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citations for this section from that chapter are now Public Resources Code, sections 25300, 25301, 25302, 25302.5, 25303, and 25324.

Chapter 7 Administration

Article 2. Disclosure of Commission Records

§ 2501. Policy.

Purpose and Necessity

The Commission proposes to add a reference in the regulation to the California Constitution because in 2004, the voters of California approved Proposition 59, which added language to the Constitution directing that statutes and regulations shall be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access. (Cal. Const., art. I, § 3, subd. (b)(2).) This addition is necessary to provide a complete statement of the policy underlying the Commission's regulations regarding disclosure of official records.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives that provide a complete citation to the provisions underlying the Commission's policy regarding access to official records. There are no reasonable alternatives to this language that would lessen any adverse impacts on small business because there are no adverse impacts on small business; the change does not affect the rights of or requirements applicable to any small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Adding a reference to constitutional provisions that are already in effect will not have any adverse impact of business; the change does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. First, the constitutional provision referred to in the proposed amendment to the regulation is identified as a reference, as is Section 25366 of the Public Resources Code; this latter provision includes guidance regarding official records that the Commission obtains from another agency which has determined that the records are confidential. Inclusion of both provisions is necessary to provide a complete statement of the policy underlying the Commission's regulations regarding disclosure of official records. Finally, Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citation for this section from that chapter is now Public Resources Code, section 25322.

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§ 2502. Scope.

Purpose and Necessity

The Commission proposes to change the reference in this regulation from Section 25321 of the Public Resources Code to Section 25322. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citation for this section from that chapter is now Public Resources Code, section 25322.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives that provide an accurate citation to the provisions underlying the Commission's policy regarding access to official records. There are no reasonable alternatives to this language that would lessen any adverse impacts on small business because there are no adverse impacts on small business; the change does not affect the rights of or requirements applicable to any small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Correcting a reference to statutory provisions being implemented by this regulation and that are already in effect will not have any adverse impact of business; the change does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. As noted above, Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citation for this section from that chapter is now Public Resources Code, section 25322. In addition, reference to Section 25366 of the Public Resources Code is added as this provision includes guidance regarding official records that the Commission obtains from another agency which has determined that the records are confidential.

§ 2503. Construction and Definitions.

Purpose and Necessity

There are several changes proposed for this section. First, in order to conform with the Commission's proposal to include all definitions applicable to Article 1 and 2 of Chapter 3 in Section 1302, the reference to Section 1341 in subdivision (b) is changed to Section 1302. In addition, the definitions in subdivisions (8) – (11) in subdivision (b) are no longer used in these regulations and are proposed to be deleted.

Finally, language is proposed to be added to subdivision (b)(1) to include government bodies as "private third parties" for purposes of filing applications for confidential designation of data submitted as part of the Commission's data collection activities or site certification process. The application process is only available to private third parties, and the current definition of "private third parties" excludes these entities. However, several of them have indicated that they would like to have the option of filing applications for data they are required to submit. (Local publicly-owned utilities and irrigation districts may be required to submit data either under Chapter 3 or Chapter 5 of the Commission's regulations.) The proposed change allows, but does not require, them to do so. For those who do not wish to file an application, they may still ensure that the data they submit is protected from release by taking advantage of the provisions of 2505(b), which allows them to designate the information confidential before they submit it to the Commission.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives that delete the unnecessary language in this section, nor that provide governmental bodies the option of using the application process when filing data that they believe should be protected from release. There are no reasonable alternatives to this language that would lessen any adverse impacts on small business because there are no adverse impacts on small business; the change does not affect the rights of or requirements applicable to any small business.

Evidence Supporting Adverse Economic Impact Finding on Business

Adding a reference to statutory provisions that are already in effect will not have any adverse impact of business; the change does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. A reference to Public Resources Code, section 25322 is added because that section is implemented by this regulation. In addition, reference to Section 25366 of the Public Resources Code is added as this provision includes guidance regarding official records that the Commission obtains from another agency which has determined that the records are confidential.

§ 2504. Inspection and Copying

Purpose and Necessity

In subdivision (c), the Commission proposes to add a reference to new Section 2508, as it is one of the regulatory provisions under which the Commission may make a determination of confidentiality.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no reasonable alternatives to providing complete citations to the regulatory provisions under which the Commission may make a determination of confidentiality. There are no reasonable alternatives to this language that would lessen any adverse impacts on small business because there are no adverse impacts on small business; the change does not affect the rights of or requirements applicable to any small business.

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Evidence Supporting Adverse Economic Impact Finding on Business

Adding a reference to another regulatory provision under which the Commission may make a determination of confidentiality will not have any adverse impact of business; the change does not affect the rights of or requirements applicable to any business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. A reference to Public Resources Code, section 25322 is added because that section is implemented by this regulation. In addition, reference to Section 25366 of the Public Resources Code is added as this provision includes guidance regarding official records that the Commission obtains from another agency which has determined that the records are confidential.

§ 2505. Designation of Confidential Records.

Purpose and Necessity

This section sets out the process the Commission uses to determine which records are entitled to an exemption from the disclosure requirements of the Public Records Act. (Gov.

Code, section 6250 et seq.) All but one of the changes proposed for this section are found in subdivision (a), which applies to confidential designations sought by private third parties. The three ways that private third parties can use to protect data they submit are 1) filing an application, on which a determination is made by the Executive Director using a “reasonable claim” standard; 2) providing a certification that the information is substantially similar to that which the Commission or the Executive Director has already determined to be confidential; and 3) filing an attestation that the information has not been previously released and falls within one of the categories of information that the Commission’s regulations identifies as automatically confidential. Designation of records submitted by governmental agencies and records generated by the Commission are addressed in subdivisions (b) and (c) respectively.

First, the Commission proposes to change “is to” to “should” because the latter word is more accurate. In subdivision (a)(1)H) and subdivision (a)(2), the Commission proposes to correct citations that are currently inaccurate. The changes proposed for subdivision (a)(3)(B) are designed to address confusion that currently exists about the appropriate standard of review applied when a filer seeks a determination from the full Commission that the information identified in an application for confidentiality that has been denied by the Executive Director is in fact entitled to protection. As discussed above, the Executive Director applies a “reasonable claim” standard to applications for confidential treatment. This approach was adopted in order to reduce the burden on entities filing information they believe is confidential, but which has not been the subject of a Public Records Act request. Under this approach, applicants are entitled to protection of those records if they make a “reasonable claim” that the information is exempt from disclosure under the Public Records Act. However, the state Constitution directs that statutes and regulations shall be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access. (Cal. Const., art. I, § 3, subd. (b)(2).) In addition, case law arising under the Public Records Act makes it very clear that any time an agency withholds information sought under the Public Records Act, it must overcome a presumption that such records are public.

The Commission believes there is significant value in reducing the burden on an applicant where there is no apparent public interest in the information for which the confidential designation is sought. Thus, the Executive Director decision may be based on a lower standard than would be required in the event of a Public Records Act request for the information. However, once the information becomes the subject of a public Commission hearing and decision, it is appropriate to apply the higher standard. Under the current language, the proceeding that an applicant initiates when seeking to protect information for which an application has been denied is identified as an “appeal”, implying that the Commission should use the “reasonable claim” standard applied by the Executive Director. However, as discussed above, the Commission believes that any determination that the Commission itself makes on the confidentiality of Commission records -- as opposed to a determination made by the Executive Director in responding to an application for confidentiality -- should be based on whether the entity seeking to prevent release has met the burden of proof in demonstrating that the record is in fact entitled to an exemption from release. This change makes that clear.

The revision proposed for subdivision (a)(3)(C) provides a missing citation to another section of this Article, which provides exceptions to the prohibition on access to data during the fourteen day period after an application has been denied. The amendment to subdivision (a)(4) is designed to ensure that the certification process described in that section is available for information that is the basis of an application for confidential designation that has been granted by the Executive Director, not just information that has been the subject of a full Commission determination of confidentiality. The Commission receives large quantities of confidential data from third parties, and virtually all confidential designations are the result of the application process, rather than a decision of the full Commission. This change makes it clear that the Executive Director determinations can be relied upon by subsequent filers.

The changes to subdivision (a)(5) amend language concerning the “automatically confidential” categories of data for which no application or certification is required. First, the Commission proposes to add language that explicitly states what happens when a filer fails to meet the requirements for automatic designation. As in other instances when a record is not confidential, the Commission will allow a fourteen day reprieve from disclosure so that the filer can remedy the problem with the filing, or seek judicial review. In subdivisions (a)(5)(B) 1 and 2, the description of the entity filing the information is deleted, and the identification of the sections under which such information is filed are updated to parallel amendments to other sections. The type of data that is eligible is unchanged. These changes are necessary to maintain conformity with proposed changes to Section 1303 and 1342. Second, commodity price data has been excluded from these categories because this information can now be derived from filings that are made available to the public by the Energy Information Administration, which provides official energy statistics from filings made with the U.S. government. Clearly, information which is publicly available is not entitled to confidential designation. Other categories of automatically confidential are identified, consisting of load forecasts, customer projections, and price forecasts submitted by LSEs that are not UDCs. The Executive Director has granted confidentiality for these data in the past and the Commission believes that they are so clearly entitled to confidential treatment that applications or certifications should not be required. Unlike UDCs, these LSEs have no captive customers, no guaranteed rate of return, and no ability to solicit new customers. This information could provide a competitive advantage to UDCs seeking to regain these retail customers, to the detriment of the non-UDC LSEs, and therefore should be protected from release. Additionally, subdivision (a)(5)(B)4 is amended to reflect the fact that other portions of this rulemaking would require the reporting of fuel cost data under a new section of the regulations; that section is now referenced here along with the fuel cost data provided pursuant to Section 12304 that is already protected as automatically confidential. Finally, because of the pronounced sensitivity of customer-specific data that the Commission receives from LSEs, we propose to add information whose release is prohibited by the Information Practices Act. (Civil Code Section 1798 et seq.) The Commission strongly supports LSE efforts to prevent the release of customer-specific information, and sees no reason why an application should be required to protect this data.

In subdivision (b), the Commission proposes several changes: to reference governmental agencies rather than public agencies, which we believe is clearer, to add federal agencies to the list of governmental agencies that can self designate information they provide to the Commission as confidential, and to add state-created entities such as the California Independent System Operator (CAISO). As the language of this subdivision includes a reference to the Freedom of Information Act (FOIA), which is a federal statute, the omission of federal agencies appears to be an oversight. This change will ensure that the entities allowed to designate information as confidential under the FOIA are specifically identified. Inclusion of the state-created entities such as the CAISO is necessary because they serve a regulatory function in managing a portion of the state's electrical grid and interact with the Commission on that basis. This change is parallel to existing language in Section 2507 of these regulations, which allows the Commission to share confidential data with other governmental entities, including state-created private entities such as the CAISO. (*See* subdivision (b)(3) of Section 2507.) Finally, a missing word ("shall") is added to the next-to-last sentence of this subdivision.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

With respect to the process changes in this regulation, no small business will be adversely affected because the change does not affect the rights of or requirements applicable to any business. With respect to the list of automatically confidential data, the Commission was asked by workshop participants to consider broadening the list of such data. The Commission has added two categories, but has also decided that a better option for addressing concerns about needlessly requiring multiple applications for the same or similar data is to rely on the certification process instead identified in subdivision (a)(4). The rationale underlying this decision is that the certification process requires filers to address changed facts and circumstances which could affect the confidentiality of information. As confidentiality can be a very fact-specific issue, it is better to require this additional level of information when deciding to treat information as exempt from disclosure under the Public Records Act. The Commission believes that the automatically confidential categories should include only those types of data that are so clearly confidential that the unavailability of an exemption is not foreseeable. The categories we propose to add meet that criterion. Thus, there are no reasonable alternatives that meet the Commission's objectives. In any event, expanding the list of such categories by two and deleting one category of data that is already public can only have a positive effect on small business by reducing the circumstances in which an application for confidential designation must be filed. Correcting the list of entities identified in subdivision (b) will have no effect on business, including small business, because it only pertains to sharing on information between governmental entities; no rights or responsibilities of business are affected by this change.

Evidence Supporting Adverse Economic Impact Finding on Business

These proposed changes to this section will not cause an adverse economic impact on business because they do not affect the rights of or requirements applicable to any business. In addition, updating the list of categories of information that are automatically

confidential will have a positive effect by adding another category of information for which an application for confidential designation need not be filed.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citation for this section from that chapter is now Public Resources Code, section 25322. In addition, a case that provides guidance about the burden of proof in proceedings in which agency records are sought to be withheld from the public pursuant to the Public Records Act is added as a reference. Finally, reference to Section 25366 of the Public Resources Code is added as this provision includes guidance regarding official records that the Commission obtains from another agency which has determined that the records are confidential.

§ 2506. Petition for Inspection or Copying of Confidential Records; Chief Counsel Decision.

Purpose and Necessity

The Commission proposes several changes to this section, which identifies the procedures to be followed when a member of the public seeks to inspect or copy records that the Commission is treating as confidential. First, it requires petitioner to cite legal authority as well as facts in justifying a request for inspection or copying of confidential records. Second, in order to avoid re-litigation of issues that the Commission has already addressed, language is added to subdivision (a) that requires a petition supporting a request for inspection or copying of records already deemed confidential pursuant to a Commission decision to identify new information or changed circumstances that materially affect the previous determination. This is necessary to avoid wasting Commission time and staff resources addressing an issue that has already been decided. In addition, the Commission proposes to add language requiring the Commission to provide a justification of the confidentiality of the record and a copy of the Commission's regulations governing the disclosure of its records. This language is found in Public Resources Code section 25322(b)(1), and is proposed to be included here so that all of the procedural steps that are applicable to Public Records Act requests are found in one location. This should help requestors understand the process the Commission uses to respond to requests for inspection or copying of public records.

Another proposed change is found in subdivision (b)(3). There, the Commission proposes to change the phrase "ten working days" to "fourteen days." The two mean the same thing, but the Commission has found that the latter is more easily understood. In that subdivision, the Commission also proposes to change "Commission" to "Chief Counsel" to reflect the entity that will actually notify the petition, if necessary. The next change is to add new subdivision (b)(4) identifying the standard of review that the Chief Counsel must apply in responding to requests for inspection or copying of records pursuant to this section. As discussed above, the Commission allows the Executive Director to grant an application for confidentiality using a "reasonable claim" standard.

However, any decision that is made by or on behalf of the full Commission in response to a Public Records Act request for inspection or copying of data previously deemed confidential must meet a higher standard, as the Public Records Act establishes a general principle that records should be publicly available. Thus, the Commission requires the applicant to meet a higher burden of proof in justifying non-disclosure of the record any time it is addressing the confidentiality of that record. The new language makes it clear that the Chief Counsel, acting on behalf of the Commission, will apply the same standard that the Commission would apply if it were making the decision itself.

The Commission also proposes to adopt a new subdivision (b)(5) incorporating language currently found in subdivision (c). This language is more appropriately located in subdivision (b)(5) because it is the Chief Counsel that will make the determination. Moreover, subdivisions (b)(1) – (b)(5) establish a step-by-step process, and the determination would occur at a point in time between the actions described in subdivisions (b)(4) and (b)(6).

Finally, subdivision (b)(6) is proposed to reflect the fact that this rulemaking also includes a proposal for a separate section governing Commission hearings on confidentiality. Also, language is added to make it clear that the record that is the subject of reconsideration will not be released before the time for filing an appeal has passed. Language regarding the timing of the Commission's decision is deleted because the Commission's experience with a confidentiality proceeding last year demonstrated that four weeks is considerably less than the time required to hold hearings and prepare a written decision. The language in subdivision (c) that is proposed to be located in subdivision (b)(5) is deleted from subdivision (c).

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

There are no alternatives that would provide the clarification about procedural requirements and the standard of review that the Commission believes is appropriate to include in this regulation. In addition, no reasonable alternative would lessen any adverse impact on small business because there is no adverse impact on any small business; the amendments do not contain any new requirements applicable to small business. To the extent that a small business is either seeking information under the Public Records Act or seeking to protect information from release, it should benefit from the greater clarity that is achieved by these amendments. No additional requirements will apply to small business.

Evidence Supporting Adverse Economic Impact Finding on Business

These changes are purely procedural and are clarifying in nature. To the extent that a business is either seeking information under the Public Records Act or seeking to protect information from release, it should benefit from the greater clarity that is achieved by these amendments. In addition, the amendments do not contain any new requirements applicable to business.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citation for this section from that chapter is now Public Resources Code, section 25322. In addition, a case that provides guidance about the burden of proof in proceedings in which agency records are sought to be withheld from the public pursuant to the Public Records Act is added as a reference. Finally, reference to Section 25366 of the Public Resources Code is added as this provision includes guidance regarding official records that the Commission obtains from another agency which has determined that the records are confidential.

§ 2507. Disclosure of Confidential Records.

Purpose and Necessity

This regulation governs the disclosure of records that the Commission has determined to be confidential. Most of the changes are directed at identifying the specific circumstances under which records may be deemed confidential or protected from release. For example, the change to subdivision (a) consists of a reference to a new section that provides for a Commission determination of confidentiality. Similarly, the changes to subdivision (b) identify all circumstances under which records may be subject to a pending determination of confidentiality. Finally, the change proposed for subdivision (c) would simplify the existing language by referring generically to a previous determination of confidentiality, rather than listing the sections individually. These changes make clear the Commission's responsibilities with respect to protecting records from release under the identified circumstances. The phrase "or representatives" is added to subdivision (c)(1) to include individuals who may work for the Commission but are not technically employees or contractors – an example is employees of other agencies who are temporarily assigned or "loaned" to work on Commission projects.

New subdivision (d) includes a grammatical change in the first sentence to clarify that the Executive Director is the person responsible for releasing certain identified confidential data to certain entities. The provisions in existing subdivision (d) are also proposed to be re-organized and moved to new subdivision (e) so that all language regarding aggregation is contained within the same subdivision. Subdivision (e) (1) contains specific identified aggregations that the Commission has previously determined are sufficient to protect underlying confidential data. The language is slightly changed to reflect the change in the identification of market participants; "ESPs", "LDCs", "electric retailers", and "electric utility" are proposed to be eliminated; the new definitions of the various market participants are used instead. The protection provided by existing subdivision (d)(1)(A) is now found in subdivision (e)(1)(A) 1 and 2. The protection provided by existing subdivision (d)(1)(B) is now found in subdivision (e)(1)(A)3 and 4. The protection now found in subdivisions (d)(1)(C) and (D) is now found in subdivision (e)(1)(A) 5 and 6. The protection currently found in subdivisions (d)(1)(E) and (F) is now found in subdivision (e)(1)(A) 7 and 8. Finally, the protection provided by subdivisions (d)(2) and (d)(3) is now provided by subdivisions (e)(1)(B) and (C). There are no substantive changes to the identification of the protected data.

Subdivision (e)(2) also allows the Executive Director to release of aggregations of confidential data, after notice is provided to the filer. This amendment is necessary because the Commission may be prohibited under the Public Records Act from withholding aggregations of confidential data that are not themselves entitled to protection under the PRA; the Commission believes its regulations should clearly identify this possibility as well as provide filers an opportunity to request a hearing before the Commission on the confidentiality of the aggregation. The Commission also proposes to provide notice to the filers of data that is proposed to be released in aggregated form so that they may take steps to challenge the release.

Finally, amendments to subdivision (f) are necessary to provide more detail about the timelines and the process that will apply if a filer opposes an Executive Director proposal to release data previously deemed confidential, but which the Executive Director believes is no longer entitled to confidential treatment. Existing subdivision (f) is proposed to be deleted because its provisions are captured in amendments to subdivisions (e) and (f).

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission did not identify any reasonable alternatives that would reflect the requirements of the Public Records Act and the new definitions of various market participants as clearly as the proposed language. There is no reasonable alternative to the proposed amendments that would lessen any adverse impacts on small business because the amendments will not have any adverse impact on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

These changes are purely procedural and are clarifying in nature, and will not have an adverse impact on business. To the extent that a business is either seeking information under the Public Records Act or seeking to protect information from release, it should benefit from the greater clarity that is achieved by these amendments.

Reference and Authority Citations

The Commission proposes to make changes to the authority and reference citations found in the Note at the end of the regulation. Chapter 4 of Division 15 of the Public Resources Code (beginning with Public Resources Code, section 25300) was replaced in its entirety in 2003; the correct reference citation for this section from that chapter is now Public Resources Code, section 25322. Finally, reference to Section 25366 of the Public Resources Code is added as this provision includes guidance regarding official records that the Commission obtains from another agency which has determined that the records are confidential.

§ 2508. Commission Hearing on Confidentiality of Records.

Purpose and Necessity

This is a new section, designed to provide more guidance about the procedures that will be followed and the standard of review that will be applied when the Commission holds a

hearing on the confidentiality of information. Under the proposed language, such a hearing is required whenever any of the following circumstances occur: 1) an any entity seeks, pursuant to Section 2503, to protect data for which an application for confidentiality has been denied by the Executive Director, 2) an entity seeks to prevent release of data that the Chief Counsel has determined to be confidential pursuant to Section 2606, or 3) an entity seeks, pursuant to Section 2507, to prevent release of aggregated confidential data or data the Executive Director has deemed is no longer entitled to confidential status.

Existing regulatory language requires a hearing in the latter two circumstances. With respect to the first circumstance, the current regulations allow for an appeal to the full Commission of an Executive Director's decision denying confidentiality under the "reasonable claim" standard. The purpose of this new section is, in part, to make clear that under language proposed for this section and Section 2505, the Commission hearing in all three circumstances -- not just the latter two -- will address whether the applicant has met its burden of proof in demonstrating that the record is entitled to protection from release under the Public Records Act. As discussed above, the Commission believes that a Commission decision on the confidentiality of a record should always apply the standard required pursuant to the Public Records, not the "reasonable claim" standard available to applicants when there is no PRA request for the information.

Subdivision (c) of this section allows the Commission to avoid an additional or subsequent hearing on a record which has been the subject of a previous hearing if the person seeking the record fails to demonstrate any new information or changed circumstances that affects the previous determination. This language is necessary in order to prevent needless re-litigation of issues that have already been decided by the Commission. Finally, the regulation provides that a record shall not be made available for inspection or copying for fourteen days after the Commission determines that the record is not entitled to protection under the PRA. This allows the filer of the information sufficient time to seek judicial relief without the record being released in the interim.

Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impacts on Small Business

The Commission did not find any reasonable alternatives that would provide the clarification about procedural requirements and the standard of review that the Commission believes is appropriate to include in this regulation. The Commission did not find any reasonable alternatives that would lessen any adverse impact on small business because the regulation will not have any adverse impacts on small business.

Evidence Supporting Adverse Economic Impact Finding on Business

These changes are purely procedural and are clarifying in nature. To the extent that a business is either seeking information under the Public Records Act or seeking to protect information from release, it should benefit from the greater clarity that is achieved by these amendments.

Reference and Authority Citations

The proposed language for this section also contains authority and reference citations. The authority cited includes two statutes that provide the Commission with general rulemaking authority. The reference citations include statutory provisions that govern the Commission's disclosure of public records under the Public Records Act. In addition, a case that provides guidance about the burden of proof in proceedings in which agency records are sought to be withheld from the public pursuant to the Public Records Act is included as a reference.